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Sixth Report

October 1, 1978 — March 31, 1979

The Ombudsman | Ontario

HON. DONALD R. MORAND

The Ombudsman | Ontario

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June 27th, 1979

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

I have the honour to present the Sixth Report of the Ombudsman for the period October 1, 1978 to March 31, 1979.

This Report is submitted pursuant to Section 12 of The Ombudsman Act, 1975.

Yours very truly,

Donald R. Morand

Donald R. Morand

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CHAPTER ONE

INTRODUCTION

As the second Ombudsman of the Province of Ontario, I am pleased to present the Sixth Report of the Ombudsman. This Report covers a period of time from October 1, 1978 to March 31, 1979 and as such spans the period of nine days when Mr. Arthur Maloney, Q.C. was still Ombudsman, from October 9th to December 31, 1978 when Mr. Keith Hoilett was the Temporary Ombudsman plus the period of time from January 1 to March 31, 1979 when I had been appointed as Ombudsman.

SIXTH REPORT

This Report is smaller than the Fifth Report. I have decided to discontinue Volume 2 of the Report. In the previous three Reports, Volume 2 consisted of a complaint-by-complaint summary of all grievances dealt with and completed during the reporting period. It became obvious that very few people were reading this material. All of the information contained therein is stored in our computer records and can be readily retrieved and printed out if needed.

In this Sixth Report, the number of Detailed Case Summaries has been decreased. Of more importance there is an addition to this Report which contains a summary of previous recommendations by this Office which have not yet been adopted and is found under the heading "Recommendations Denied." (Appendices A and B)

THE COMPLAINTS

Since the inception of the Office of the Ombudsman in May of 1975, until the cut-off date of this Report, March 31, 1979, the Office received complaints for which a total of 23,373 files were opened. During this period the Office also dealt with close to 26,500 non-jurisdictional complaints and information requests for which no follow-up action was required and for which a file was not opened. A total of 21,507 files were closed since May of 1975; 7,903 (37%) of these files involved complaints which were within the jurisdiction of the Office of the Ombudsman to investigate.

STATISTICAL HIGHLIGHTS

The following table highlights some of the statistics contained in this Report:

FILES:
OPENED 2,888 NO FOLLOW-UP COMPLAINTS & COMPLAINT
CLOSED 3,126 INFORMATION REQUESTS: 2,558 REQUESTS: 3,664

BY JURISDICTION	BY ORGANIZATION
1,502 within jurisdiction	2,567 involved Ontario Government ministries or agencies
361 information requests	491 involved private agencies, firms or individuals
88 jurisdiction undetermined	236 involved municipalities or local police forces
1,713 outside jurisdiction (374 premature)	154 involved Federal Government departments or agencies
	149 involved courts
	71 involved international, other provinces or unspecified
3,664* Complaints	3,668** Complaints

* Some files involved more than one complaint

** Some complaints involved more than one organization

During the period covered by this Sixth Report, October 1, 1978 to March 31, 1979, we opened 2,888 files. The complaints that warranted a file opening were received in three ways; 67% were mailed to our Office from complainants, 20% were brought to our attention through personal interviews at our Office in Toronto, and 13% came from complainants who attended our private hearings held throughout the Province.

Of the 3,215 complaints dealt with during this period, for which jurisdiction was determined, 1,502 or 47% were complaints within the jurisdiction of the Ombudsman. The percentage of complaints within our jurisdiction during this reporting period (47%) should not be compared with the previous reporting period (37%) for the purpose of drawing conclusions, because our new file opening policy has significantly reduced the number of files opened for complaints which are outside the jurisdiction of the Ombudsman. Nevertheless, our Office dealt with more jurisdictional complaints (1,502) during this reporting period than during any other six month report period. Also, the average duration to deal with a jurisdictional complaint declined from 176 days for the previous reporting period to 170 days for this report period. These figures support our view that the Office is becoming more responsive to the needs of citizens who have complaints that are within the jurisdiction of the Ombudsman. Our capability to provide service in this area which is central to the mandate of the Office will continue to be of primary concern since, at the end of the period covered by this Report, 1,528 or 79% of the 1,914 "in progress" complaint files involved complaints that are within our jurisdiction to investigate.

As noted in previous reports, our Office will continue to make every reasonable effort to assist those citizens who come to the Ombudsman with problems that do not fall within the Ombudsman's jurisdiction. For this report period our Office was able to be of assistance in 98% of the 1,713 non-jurisdictional complaints that warranted the opening of a file. These complainants received a letter from our Office which provided either a specific referral to an appropriate agency or a clarifying explanation of the complainant's circumstances. The complainants who were involved with the 2,558 no follow-up complaints and information requests for which we did not open a file were provided with a referral or an explanation of their situation in the course of their interviews with our staff.

Also, during the period covered by this Report we dealt with 2,558 non-jurisdictional complaints and information requests which did not require follow-up action on our part, and for which we did not open a file. These no follow-up complaints and information requests were received and handled through our interview services by means of office interviews (4%), telephone interviews (80%), and hearing interviews (16%).

The percentage of both the complaints which warranted a file opening (33%) and the no follow-up complaints that were received in the course of interviews, continues to support our view that citizens perceive this Office as one which they can approach on a very personal and individual basis either by meeting with members of our staff in the course of a private hearing or by contacting the Office in person or by telephone.

Once again, Northern Ontario had the highest complaint-to-population ratio, as well as the single largest volume of complaints from our nine regions. The Ontario-North Region accounted for 472 (16%) of all complaints where a geographical determination could be made.

FUTURE REPORTS

It is my intention that hereafter this Office will report yearly rather than every six months. The size of the report will be substantially reduced in that fewer sample cases will be included.

Future reports will still be comprehensive accounts of the Office and will contain those cases in which our recommendations have been denied.

During the course of the year interim reports will be issued as required. These reports will contain mention only of special matters dealt with by the Office and recommendations denied.

The purpose of the interim reports will be to accommodate those complainants who, in our opinion, have a legitimate grievance which should be corrected. In this respect I see interim reports to be the appropriate vehicle to present their case to the Select Committee of the Legislature without waiting until the year end.

REGIONAL OFFICES

On June 15, 1979, our first regional office was opened in Thunder Bay. This office will be staffed by three people, two of whom have been moved from this office and the other recruited from the Thunder Bay area. The opening of the office has been accomplished without adding to our staff complement and it is hoped that a substantial portion of the cost of that office may be saved in travel expenses and other costs of investigating complaints in the western regions of the province. The city of Thunder Bay was chosen as it is the center of far Western Ontario and those regions which have the most difficulty in being handled by our Toronto Office.

An evaluation study will be made at the end of six months and should the Thunder Bay office prove its worth it is my intention to open two more branch offices in the next year.

PRIVATE HEARINGS

In keeping with the Office's commitment to continue Private Hearings throughout the Province, I am pleased to report that during the period covered by this Sixth Report, the Office of the Ombudsman held Private Hearings in the following 18 communities:

Date	Location	No. of complaints received	No. of interviews conducted
Oct. 17	Schreiber	16	12
Oct. 18	Manitouwadge	7	6
Oct. 19	Hornepayne	10	10
Nov. 7	Windsor	40	32
Nov. 8	Leamington	30	30
Nov. 9	Chatham	56	55
Dec. 5	Atikokan	24	21
Dec. 6	Fort Frances	28	24
Dec. 7	Rainy River	11	11
Jan. 9	Belleville	70	56
Jan. 10	Port Hope	49	46
Jan. 11 & 12	Peterborough	100	97
Feb. 6	Sudbury	108	107
Feb. 7	Sturgeon Falls	51	49
Feb. 8	North Bay	82	78
Mar. 6	Hawkesbury	34	31
Mar. 7	Morrisburg	22	20
Mar. 8	Carleton Place	32	31

A total of 715 private interviews were conducted which gave rise to 770 distinct complaints. Carleton Place, the last municipality visited during this reporting period, represented the 126th time members of our staff conducted Private Hearings.

VISITS TO INDIAN RESERVES AND SETTLEMENTS

As mentioned in the Fifth Report members of our staff have continued to visit the Indian Reserves and Settlements throughout the Province to enable the Native population to share in the services which the Ombudsman can offer to the citizens of Ontario.

Although we continued to pay visits to the northern bands, we also visited a number of the bands in the southern and

central portions of the Province. As the knowledge of the Ombudsman's role and function grows, the Office is called upon to conduct a greater number of investigations into matters which cause concern to our Native population. Elsewhere in this report there will be found a summary of the complaint and solution relating to one band's difficulties in making application for funding under the Wintario Capital Grants Program of the Ministry of Culture and Recreation.

Again we wish to acknowledge the cooperation extended to us by the federal departments of Indian Affairs and National Health and Welfare in making accommodation available to our staff. Also the assistance of the Ontario Ministries of Northern Affairs and Natural Resources is appreciated, as they helped us in our travels in the far north.

Also many of the private sector corporations who have considerable dealing with the bands have given excellent cooperation in resolving the difficulties which are sometimes faced. In particular we wish to thank the Manager of Northern Affairs of Bell Canada in Thunder Bay for the prompt action which that firm has taken in response to approaches which this office has made on behalf of the Indian population in the far north.

INDIAN RESERVE, SETTLEMENT, AND COMMUNITY VISITS

Oct. 4, 1978	Fort Hope Indian Reserve
Oct. 5 & 6	Lansdowne House Settlement
Oct. 7	Summer Beaver Settlement
Oct. 8	Webequie Settlement
Oct. 31	Cape Croker Reserve
Oct. 31	Saugeen Reserve
Nov. 1	Christian Island Reserve
Nov. 1	Gibson Reserve
Nov. 2	Parry Island Reserve
Nov. 2	Moose Deer Point Reserve
Nov. 3	Georgina Island Reserve
Nov. 6	Chippewas of Rama Reserve
Dec. 11	Aroland Community
Dec. 12	Constance Lake Reserve
Dec. 13	Long Lake Reserve #58
Dec. 13	Long Lake Reserve #77
Dec. 14	Marten Falls Reserve (Ogoki)
Jan. 15, 1979	Whitefish Lake Reserve
Jan. 16	Serpent River Reserve
Jan. 16	Spanish River Reserve
Jan. 17	Mississauga Reserve No. 8 (Blind River)
Jan. 17	Thessalon Reserve
Jan. 18	Batchewana Reserve
Jan. 18	Garden River Reserve
Feb. 19	Mississaugas of Scugog Reserve

Indian Visits - Cont'd..

Feb. 19	Hiawatha Reserve (Keene)
Feb. 20	Alderville Reserve
Feb. 21	Mohawks of Bay of Quinte Reserve (Deseronto)
Feb. 22	Golden Lake Reserve
Feb. 23	Iroquois of St. Regis Reserve
Feb. 27	Curve Lake Reserve

THE CORRECTIONAL REPORT

In our Fifth Report to the Legislature, we stated that further updated information was required from the Ministry of Correctional Services in respect to a number of our recommendations and that a letter requesting this material was sent to the Ministry on August 8, 1978. By the end of our Sixth Reporting Period we still had not received the Ministry's response. However, during subsequent communication with the Ministry, we have been informed that a response has been prepared and that it will be forwarded to our office in the immediate future. An update will be provided by our Office as soon as possible.

CORRECTIONAL AND PSYCHIATRIC SERVICES

In our Fifth Report, we commented on the need to introduce coloured envelopes which are pre-addressed to the Ombudsman and clearly marked "Confidential" for inmates housed in Ontario correctional facilities. These are now in use. In addition, we introduced printed bilingual signs which were posted within the institutions to inform inmates of the new procedures for writing to the Ombudsman.

During the Sixth Reporting Period, I take pleasure in reporting that there were no significant changes in our relationship with either the Ministry of Correctional Services or the Ministry of Health. The number of complaints received by this Office was consistant with the numbers received during previous reporting periods.

OMBUDSMAN FILM

The twenty-three minute film commenced prior to my appointment as Ombudsman has been completed and is now available for showing. Distribution of this film is currently underway on a Province wide scale to community groups such as service clubs, associations, schools, churches, colleges, institutions, business and industry. In addition the film, titled "The Ontario Ombudsman", will be telecast regularly by

commercial and cable television outlets across the Province. It is intended that its use will advise the people of the Office of the Ombudsman and make clear what the Office can do and what is beyond its jurisdiction.

OMBUDSMAN BROCHURE

Also completed at the end of March, 1979, was the printing of a bilingual (English and French) brochure titled "Can Your Ontario Ombudsman Help You?" This Brochure was made available through the Supermarket Information Network distribution system for an 8-week period which commenced April 30th. Depending on the results of this method of distribution, a further 8-week distribution program may be arranged for the Fall of this year. Additionally, the brochure is available from the community information centres throughout the Province as well as through Northern Affairs offices and other government outlets, including area Legal Aid offices and storefront Legal Aid clinics. It is also intended to distribute a copy of the brochure to each of the 12,000 lawyers in Ontario. The purpose of reaching this particular group is that there is evidence that many lawyers are somewhat unclear as to which matters fall within our jurisdiction and our brochure will be an aid in helping them to decide when and when not to make a referral to our office.

Also our pamphlet is presently being translated into Cree and Ojibway to service the native people living on reserves and in settlements in Ontario.

It is our hope that the Pamphlet and the film will decrease the number of non-jurisdictional complaints made to the Office and will result in a saving of time to the Office which can be spent more productively on complaints which come within our jurisdiction.

The content of our Brochure is reprinted in Appendix E of this Report.

COURT CASES

We presently have two cases dealing with our jurisdiction before the Courts. One concerns our jurisdiction with the Health Disciplines Board and the other deals with our position in the Pickering complaint.

A. Health Disciplines Board

In our Fifth Report we reported on our application to the Supreme Court of Ontario for a declaratory order respecting our jurisdiction over the Health Disciplines Board. The respondents in the application were the Health Disciplines

Board and the Attorney General of the Province of Ontario. This application was made pursuant to section 15(5) of The Ombudsman Act which states:

> "If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question."

The questions to be determined in the application were:

1. Is the Health Disciplines Board of the Province of Ontario a governmental organization of the Province of Ontario within the meaning of The Ombudsman Act?

2. Does the Ombudsman have jurisdiction pursuant to section 15(1) of The Ombudsman Act to investigate a review and decision made by the Health Disciplines Board of Ontario in respect of the case in issue and other cases within the same class?

The application was argued before the Honourable Mr. Justice Labrosse on December 13, 1978, and judgment was given orally on December 14, 1978. Mr. Justice Labrosse answered both questions set out in the application in the affirmative. He held that the Health Disciplines Board is a governmental organization within the meaning of The Ombudsman Act, and he held that the Ombudsman does have jurisdiction under section 15(5) of the Act to investigate the review and decision of the Health Disciplines Board which were the subject of the complaint. However, he struck out the last words of the second question, "and other cases within the same class", on the ground that the words were confusing.

On December 29, 1978, the Health Disciplines Board and the Attorney General, through their counsel, individually served Notices of Appeal of the judgment of The Honourable Mr. Justice Labrosse to the Ontario Court of Appeal.

The Appeal was argued before the Ontario Court of Appeal on June 7th and June 8th and judgment was reserved.

B. North Pickering Court Application

Our Fifth Report gave an account of the events which resulted in the Ombudsman's application to the Supreme Court of Ontario concerning certain North Pickering cases. This application requested the court to indicate whether the Ombudsman would have the jurisdiction to re-investigate or

further investigate the complaints of those former North Pickering landowners whose cases were before the Commission of Inquiry.

July 10, 1979 has been scheduled by the court as the tentative date for hearing this matter. A further report will be made when appropriate.

NORTH PICKERING HEARINGS BEFORE MR. KEITH HOILETT

In terms of the number of witnesses heard and the number of days sat, there have been no significant changes in the status of the North Pickering Hearings from that reported in the Ombudsman's Fifth Report.

The Chairman and Council have met on several occasions to deal with the few routine matters. Written arguments by counsel, parts of which have been submitted, have been only partially completed.

The last such meeting was on Wednesday, May 30th, when counsel indicated that complete written arguments will be ready for exchange by July 15, 1979.

It would still be premature to forecast when a final report will be prepared.

COMMENTS ON THE WORKMEN'S COMPENSATION BOARD'S STATEMENT OF ITS POLICY ON EXTENDING "BENEFIT OF REASONABLE DOUBT"

The Workmen's Compensation Board has long operated under the policy of extending the benefit of reasonable doubt to the employee. Both the application of this policy by the Board and the failure of the Board to apply the policy to certain applications for compensation have been the subject of a number of investigations conducted by this Office, and the subject of consideration and comment by the Select Committee on the Ombudsman.

The latest statement of the policy on "Benefit of Reasonable Doubt" was approved by the Corporate Board on December 15, 1978, and may be found at Appendix D of this Report. When Mr. G.W. Reed, Vice Chairman of Appeals for the Board appeared before the Select Committee in February of this year, he invited comments on the policy statement. I welcome the opportunity to respond to his request in this Report, in the sincere hope that my observations will be of some assistance to the Committee which I understand the Board has established to review the policy.

In my view, the present Board's statement of the policy, while an admirable attempt to reduce to writing an illusive concept, fails to hit the mark because it is unduly long, lacks clarity, and confuses the benefit of reasonable doubt with other legal principles and rules of evidence. I repeat that I make these criticisms in the knowledge that they will be received in the constructive manner in which they are intended.

If lawyers have difficulty understanding the Board's statement, how then are the Board members, many of whom are not legally trained, to know when to apply the policy? How is the claimant for compensation to know whether the policy will be applied on the facts of his or her case?

As I understand it, the Board policy is intended to be applied in favour of the employee in situations where the evidence is equally (or almost equally) balanced. However, the Board states that "the employee does not require a preponderance of evidence in support of his claim" but that it is the "balance of probabilities" which is the basis upon which "reasonable inferences can be drawn in favour of the employee". However, it is also stated that the employee's case does not have to be proved on a preponderance of evidence. The Board seems to be saying that where the evidence consists of "possibilities" in favour of allowing the claim which are equally (or almost equally) balanced by possibilities against allowing the claim, then these "mere possibilities" are not sufficient to tip the scales in favour of the employee.

The third paragraph of the Board's statement of the policy states that the Board "will draw from all the circumstances of the case, from the evidence adduced and from the medical opinions, all reasonable inferences and presumptions in favour of recognizing entitlement". These "reasonable inferences" are, according to the fourth paragraph of the policy statement, based on "the balance of probabilities and not mere possibilities".

To my mind, these aspects of the policy statement create confusion as to the degree of proof required by the Board before the benefit of doubt is extended in favour of the employee. It would seem that the Board's statement has established a stricter standard of proof than that which was indicated to members of the Select Committee in August, 1978, and in February, 1979. As an illustration of this, I make reference to three of the analogies used by representatives of the Board and Mr. J.P. Bell, Counsel to the Select Committee.

1. When evidence for and against the employee's claim is evenly balanced, the scales are tipped in favour of the employee by extending the benefit of the doubt (Dr. W.F. Jacobs, Commissioner of Appeals, August, 1978):

2. In baseball parlance "the tie goes to the runner (Mr. J.P. Bell, August, 1978):

3. "...when there is something less than a tie, the benefit of doubt goes to the injured workman." (Mr. G.W. Reed, February, 1979).

By imposing, before applying the benefit of doubt, the requirement that any reasonable inference in favour of a claim must be based on the balance of probabilities, the Board, in effect, requires that the civil standard based on a preponderance of evidence be met. If, at the end of a trial, the evidence is evenly balanced, then the plaintiff's claim fails because in order to meet the civil standard it is necessary for the plaintiff to establish his or her case with a preponderance of evidence, that is to say, more than 50% of the weight of the evidence must favour the plaintiff's case. From discussions held between representatives of the Board, myself, and members of my staff, and a reading of the Hansard accounts of discussions before the Select Committee, I am satisfied that it was not the intent of the Board to require a preponderance of evidence in favour of the employee before extending the benefit of the doubt to that employee. The unfortunate situation of meaning one thing and saying another seems to have developed. I have confidence in the abilities of the Board's Committee to clearly define the principles involved in a way which reflects the laudable intention of the Board in having such a policy. I should like to make the following brief recommendations for the Committee's consideration:

-that the language used in the statement be clearly reflective of the actual intent behind the policy and the actual implementation of the policy by the Board;

-that the language used in the statement be chosen with the lay person in mind so that those who administer the policy and those who are affected by it are better able to understand its operation;

-that if the Board intends to make a distinction between evidence which is stated in terms of possibilities and evidence which is stated in terms of probabilities, the Board should clarify the relative importance of these terms so that those who must give the evidence are able to appreciate the distinction;

-that hypothetical examples illustrating when the policy is applicable be made generally available by the Board on request.

BACKLOG OF CASES

Upon completing a review of the work in progress in the Office, it became obvious to me that we have a substantial backlog of Workmen's Compensation Board investigations. Strenuous efforts have been made to clear up this backlog by assigning all available personnel to this area. It is anticipated that other organizational and managerial plans presently underway might materially reduce this backlog in the next year. The complexity and the length of time involved in investigating a Workmen's Compensation Board complaint coupled with financial restraints have resulted in the accumulation of this backlog that we presently experience. We are hopeful that we will dispose of this backlog within the calendar year. If not, it may be necessary to add one or two employees to the office next year.

RECOMMENDATIONS DENIED AND SECTION 22(3) (d) or (e) RECOMMENDATIONS

This being my first Report since becoming Ombudsman, I thought it appropriate to take inventory of all those cases since the inception of the Office of the Ombudsman where my predecessor or Mr. Keith Hoilett in his capacity as Temporary Ombudsman either: (1) made a recommendation under section 22(3) of The Ombudsman Act which was initially denied by the governmental organization to which it was addressed; or (2) made a recommendation pursuant to section 22(3) (d) or (e) that a practice be altered or a law reconsidered. The results of this "stock taking" are found at Appendices A and B respectively. Each Appendix is organized alphabetically, by the governmental organization to which the recommendation was addressed, and chronologically by Ombudsman Report.

Although each Appendix speaks for itself, a few points are worth mentioning. Firstly, I have purposely not included the North Pickering case, in spite of the fact that it falls into both categories, since its history is complex and well-documented in previous Ombudsman and Select Committee Reports. The case is still "in-progress", and its status is commented on earlier in this Report.

Secondly, it is important to recognize that the second category of cases, those wherein a recommendation was made that a practice be changed or a law reconsidered, does not include those cases where the body that was complained of in

a particular case agreed to alter a practice or reconsider a law during the course of an investigation, so that no formal recommendation to this effect was necessary.

The Select Committee on the Ombudsman has, pursuant to its mandate, considered all those "recommendation denied" cases where the Ombudsman has seen fit to exercise his final sanction, that is to report to the Legislative Assembly on the results of his investigation of a particular case, where the governmental organization to which a recommendation was directed, failed to take action which the Ombudsman felt was adequate and appropriate. There are a further 11 such cases in this Report which fall into this category. Only ten are presented since in one case two complainants share the same complaint. These cases are as follows:

Detailed Summary No.	Page
2	22
4	28
6	39
21	70
34	101
35	105
36	108
37	112
38	116
39	123

There is of course some overlap in the two Appendices where the Ombudsman made a recommendation under section 22(3)(d) or (e) that was denied by the body to which it was addressed.

The Appendix containing the second category of cases reveals some interesting - if disturbing - information. Although in some cases the head of a governmental organization responded favourably to a recommendation, the alteration in practice or the legislative amendment recommended has yet to be implemented. I am confident that the appropriate persons will take note of these situations, some of which I am sure are oversights, so that the assistance of the Select Committee will hopefully not be required.

Speaking of the Select Committee, I am pleased to report that I am very happy with the support that both the Office and I have received from the Committee and its counsel since I became Ombudsman. The Committee accepted an invitation which I extended to meet with me and my staff, and visited our Offices with its counsel on January 30, 1979 to enhance its understanding of our work. I read with interest the Committee's Sixth Report, and look forward to a long and friendly relationship with the Committee, which I have often referred to as the final arrow in the Ombudsman's quiver.

COMPLAINT HANDLING PROCEDURES

Shortly after taking office, two employees commenced a study of our system of handling complaints and the flow of files through the Office. This study is nearly completed and has already indicated several areas in which time might be saved. Upon completion of the study and upon perusal of the report it is anticipated that we will be able to expedite the flow of work throughout the Office.

PERFORMANCE APPRAISALS

Upon taking office I found that the personnel files did not contain any performance appraisals of the employees. In order to assess the worth of the employees to the Office it is essential that a system of performance appraisals be in existence. Woods, Gordon & Company have prepared a report and a system of appraisals for our organization and this system is already underway. I am satisfied that over the years this system will be of invaluable help to future Ombudsmen in the performance of their duties.

SALARY STUDY

Upon taking office, I perused the Salary Administration Study prepared for our office by Hickling-Johnston, Management Consultants. I have decided that a further study be conducted in the office regarding salaries. This study has not yet commenced but a report will be made when the study is completed.

WORD PROCESSING

It is my desire to initiate a word processing system in the Office. This system has been found to be highly successful in expediting work and in cutting costs. It is a combination of skills and new office machinery. A start has been made on this project and it will take approximately two years to complete. Further reports will be made as the conversion to the new system takes place. We should be able to initiate the system without any additional cost to the office other than normal costs.

LEASE

Our lease on the present quarters expires on July 31, 1980. Shortly after taking office, I commenced a search for new office space. The present lease requires that notice of our intention to renew must be given by February 15, 1980. Our present lease

further requires that the renewal be renogotiated, but that the rent will be at least $15.00 per square foot. We have already studied a number of potential new sites and we are continuing our search.

We have located a potential facility which is larger than our present quarters and will accommodate any expected expansion for a number of years to come. These premises are already owned by another government agency. We would be the sole tenants of the building, which is a desirable position from the office's point of view, as we would be able to control access and also ensure the security of documents. The premise we have in mind is centrally located and a long-term lease can be arranged. It would appear that this location would be ideal in all respects, including the price. It is my hope that we will be able to consummate this arrangement in the near future.

AUTOMOBILES

The Office presently has ten automobiles and it is our intention to gradually reduce this number to five or six vehicles. It is anticipated that the Office will always require some vehicles for investigations within a 100 mile radius of the city of Toronto. We are confident that by putting into effect a mileage arrangement for employees willing to use their own vehicles and by the judicious rental of vehicles our automobile costs can be materially reduced.

MICROFILMING

Our office now has some 23,000 files in existence of which approximately 21,000 have been closed. In order to cut down the required storage space in this office, which costs us approximately $12.75 per square foot per year, a system of microfilming the complaint letter and the reporting letter has been introduced. When this project is completed we will be able to transfer our closed files to the Archives and thus achieve a more economical use of space.

THE BLUEPRINT

Mr. Maloney has completed his Blueprint as he promised and has submitted it to the Legislature.

ATTENDANCE AT CONFERENCES AND SPECIAL EVENTS

During this reporting period members of the staff participated in two important Ombudsman functions outside Ontario.

In February, 1979, Ellen Adams, Director of Special Services, while vacationing in Jaipur, India, called on the Acting Lokayukta (Ombudsman) for Rajasthan, Mr. Justice D.P. Gupta who is also a Judge of the High Court of Rajasthan. After a brief exchange of information concerning the respective Ombudsmen offices, she was invited by Mr. Justice Gupta to address the Judges of the High Court and the Members of the Local Bar Association to speak about Ombudsmen's offices in other countries and specifically in Ontario.

This was an important visit because Ombudsmen from India have so far not participated in any of the International Ombudsmen Conferences and it is hoped that this first visit from someone connected with an Ombudsman's office may result in Mr. Justice Gupta and other Indian Ombudsmen participating in the International Ombudsman Conference next year in Jerusalem.

From October 1st to 4th, Mr. James Stewart, Legal Officer, represented the Office at the United States Association of Ombudsmen Conference in Dayton, Ohio, at the invitation of Ms. Bonnie Macaulay, the Dayton Ombudsman, and Chairperson of the Conference.

The U.S.A.O. assists existing Ombudsmen throughout the United States in improving the operation of their offices and encourages the establishment of Ombudsman offices at the national, state and local level in the United States by social and educational means.

The representation of the Office of the Ontario Ombudsman at the United States Association of Ombudsmen Conference served to maintain a vital link of communication in the relationship of our office with the wider international Ombudsman community.

CONCLUSION

Since taking office much of my time has been consumed by the task of assimilating the work in progress and the respective responsibilities of the personnel of the office. I have been busy attempting to meet all of the Members of the Legislature and the Deputy Ministers.

I am pleased to state that I have found the employees of the Office to be very cooperative and in general I have found them to be a dedicated group of people. I have found them to be objective and conscientious. They have made my new duties much easier and more productive than it would have been without their cooperation. The Members and the Deputy Ministers have been, without exception, helpful and cooperative. I now have a far better view of the position of Ombudsman and personally I am more than ever convinced of the need and indeed the necessity

of an Ombudsman for the Province of Ontario. Mr. Maloney is to be commended for the fine staff that he recruited and for the make-up of the Office which commenced under his leadership.

I am satisfied that the citizens of the Province of Ontario are well served by the Office of the Ombudsman and it is my hope that in the remaining years of my tenure as Ombudsman the high standard of the Office will be maintained and indeed hopefully improved.

CHAPTER TWO

DETAILED CASE SUMMARIES

MINISTRY OF

THE ATTORNEY GENERAL

DETAILED SUMMARY NO. 1

This complaint concerned the actions of a court reporter employed by the Ministry of the Attorney General.

In July of 1974, the complainant participated in a Board of Reference Hearing following his dismissal from a Board of Education where he had been employed as an instructor. He complained that he had been unable to obtain a copy of the transcript of evidence from the presiding court reporter despite repeated attempts over a period in excess of one year. The complainant indicated that although he was no longer interested in obtaining the transcript, he felt that this situation should be corrected so that other members of the general public would not be faced with the same problem.

Although the court reporter had indicated that the transcript was never prepared because the required deposit had not been paid, the complainant contended that at no time had he or his solicitor or officials of the Ontario Secondary School Teachers' Federation, who had undertaken to pay for the transcript, been advised that a deposit was necessary.

After receiving the Ministry's statement in reply to our notice of intention to investigate this complaint, our investigator met with the court reporter. It was the court reporter's recollection that during a meeting in the fall of 1974, he had mentioned the required deposit to the complainant who had then promised to forward it but had never done so.

The investigator also interviewed the complainant, his lawyer, the lawyer's secretary and a friend of the complainant who had served as an official of the Ontario Secondary School Teachers' Federation.

The complainant's lawyer indicated that no reply had been received to a letter requesting the transcript which had been sent to the court reporter early in December of 1974. The lawyer's secretary, who recalled having had several telephone conversations with the court reporter, did not recall ever being told by him that a deposit would be required. The secretary stated that had he so advised her, she would have mailed the appropriate amount immediately. The complainant, who recalled having spoken with the court reporter on the telephone several times and also having met with him personally on one occasion, did not remember the reporter ever mentioning anything about a deposit. The friend who had accompanied the complainant to his meeting with the court reporter and had taken notes of what was said at that meeting did not recollect a deposit having been mentioned either. He stated that money was only mentioned

insofar as the total cost of the transcript was concerned. Nor did the friend's notes taken at the meeting, a copy of which was made available to our investigator, make any reference to a deposit being required.

In responding to the information received from the other individuals, the court reporter stated that he did not recall mentioning the deposit to the secretary although he did recall receiving the lawyer's letter. However, he could not locate this letter in his records. He also remembered having telephoned the lawyer concerning this letter but he could not recall any details of the conversation. Nevertheless, the court reporter continued to assert that he had mentioned the necessity for a deposit to the complainant at their meeting.

During the investigation, the Ombudsman formed the view that it might be open to him to reach certain possible conclusions and recommendations which might adversely affect the court reporter. Accordingly, pursuant to Section 19(3) of The Ombudsman Act, he invited the court reporter to make representations concerning the following possible conclusion and recommendation:

"a) Possible Conclusion

That you failed to inform [the complainant] that a deposit would be required before you would commence transcribing the tapes you took of the Board of Reference hearing.

b) Possible Recommendation

That you submit an expression of your regret to [the complainant] for your failure to notify him as set forth in paragraph a) above."

The reporter responded in writing stating that he had no further comment to make on the matter but that he wished to apologize for any inconvenience that he may have caused to those concerned.

The Director of General Investigations spoke with the Deputy Director, Courts Administration, Ministry of the Attorney General, in order to ascertain whether or not the Ministry had established a policy for court reporters so that in the event a court reporter required a deposit before preparing a transcript, this fact would be made known to the client or his lawyer when the request for a transcript was made. The Deputy Director advised that although, to his knowledge, the Ministry had not established a formal policy, this was in fact a practice followed by all court reporters.

The Ombudsman then made a recommendation pursuant to Section 22(3) of The Ombudsman Act that the Ministry of the Attorney General consider adopting such a policy or practice in order that there be no question that court reporters understand what is required of them should they be of the view that a deposit is necessary before a transcript is prepared.

The Deputy Attorney General indicated that the Ministry was prepared to accept this recommendation and directed that a memorandum be forwarded to all Ministry court reporting staff advising that when the receipt of a deposit towards the cost of a transcript was deemed necessary, the ordering party be notified of this requirement at the time the request was made. The complainant was then advised by letter that his complaint had been found to be supported and that our recommendation was being acted upon by the Ministry of the Attorney General.

MINISTRY OF

COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 2

In June of 1976, this complainant wrote to our Office complaining that she had been refused a grant by the Ministry of Colleges and Universities after she had applied under the Ontario Student Assistance Program. She appealed this decision but was dissatisfied with the reply she received.

The complainant was born in Ontario and has always lived in this Province. She graduated from university in 1969 after which she joined the Canadian Universities Services Overseas and served in Tanzania for two years. Thereafter, she returned to Ontario and left again in January, 1972 to travel abroad for two years. After returning to Canada in February of 1974, she found a temporary job and was accepted into medical school commencing September, 1974.

We were further advised that she applied for Ontario Student Assistance in September of 1974 but was informed that as she was no longer considered to be a resident of Ontario since she had been outside the Province for over two years, she was ineligible to receive a grant. Moreover, she had also been denied grant assistance for the subsequent academic years of 1975-76 and 1976-77.

Her complaint was brought to the attention of Mr. J. Gordon Parr, the then Deputy Minister of the Ministry of Colleges and Universities, by our letter dated October 22, 1976. His reply indicated that Ontario Regulation 115/75, made pursuant to The Ministry of Colleges and Universities Act, provided that grants may only be made to students who are Canadian citizens, and who, except for the time spent in a post-secondary institution, have resided in Ontario for at least twelve consecutive months prior to the first day of the month in which classes commence for the academic year for which the student applies for the grant. In the case of students who leave Canada for a period of time, Mr. Parr added that the Ministry permitted an absence of up to two years before the student loses his or her eligibility for a grant.

With respect to this complainant, Mr. Parr stated that as she had been out of Ontario for more than two years prior to February of 1974, she was eligible for grant assistance.

In the course of investigating this complaint, the investigator interviewed the complainant and obtained the relevant documentation from the Ontario Student Assistance Program. It should be added that the officials of the Ministry of Colleges and Universities were extremely co-operative and of great assistance throughout this investigation.

Under The Ministry of Colleges and Universities Act, Ontario Regulation 115/75, the complainant would have to meet the following residency requirements to qualify for a grant:

> "[Applicant] means a person who is a Canadian citizen or a person lawfully admitted to Canada for permanent residence, who is ordinarily a resident in Canada and, except for time spent at a post-secondary institution, has resided in Ontario for at least twelve consecutive months prior to the first day of the month in which classes normally commence in the eligible institution for the academic year for which he is applying for a grant . . ."

The complainant satisfied the first residency requirement as she is a Canadian citizen. With respect to the second requirement of being "ordinarily resident" in Canada, extensive legal research was carried out and it was the Ombudsman's view that the complainant was ordinarily resident in Canada at the relevant time of her application. However, she did not satisfy the final requirement of having resided in Ontario for at least twelve consecutive months prior to the first day of the month in which her classes commenced since she only returned to Ontario seven months prior to September, 1974. Therefore, the decision denying the complainant a grant was properly based on the law. However, the Ombudsman is permitted to form the opinion that the decision complained against was "in accordance with a provision of any Act that is or may be unreasonable, unjust, oppressive or improperly discriminatory."

As required by Section 19(3) of The Ombudsman Act, the then Minister of Colleges and Universities, the Honourable H. C. Parrott, was notified of the following possible conclusions and recommendations:

Possible Conclusions

"1. The two year test for eligibility is not reflected in the Regulations governing grants under the Ontario Student Assistance Program.

2. The two years absence test for eligibility is irrelevant with respect to [the complainant] as she was clearly ineligible for a grant in the academic year of 1974-75, given the fact she had not resided in

Ontario for twelve consecutive months prior to the first day of the month in which her classes commenced, although she had met the other residency requirements as set out in O. Reg. 115/75, s. 1(g).

3. [The complainant] could only have been denied a grant for her subsequent academic years because time spent at a post-secondary institution is excepted from the twelve prior consecutive months residency requirement. She had met all other residency requirements for a grant in those subsequent years.

4. The decision denying [the complainant] a grant for the academic years of 1975-76 and 1976-77 was in accordance with the provision of an Act that may be unjust."

Possible Recommendations

"1. The law on which the decision complained of was based should be amended so that an applicant would be eligible for a grant where all residency requirements are met, and time spent in an Ontario post-secondary institution would not be excepted in determining the length of time the applicant has resided in Ontario.

2. The amendment ought to be retroactive so that [the complainant] would benefit therefrom for her 1975-76 and 1976-77 academic years."

Dr. Parrott's reply indicated that the reason behind the twelve month residency requirement is to prevent the Ontario Government and the Ontario taxpayer from otherwise having to support "all the students through student aid who came in from other Provinces and possibly other countries." He stated that it would be impossible to amend the current legislation according to the possible recommendations and it would be unjust to make it retroactive because of "the number of others in the same category especially those who may not have applied for assistance because of this policy." However, Dr. Parrott did acknowledge that the two year absence test for eligibility was irrelevant with respect to the complainant.

It was the Ombudsman's opinion that the complainant's situation clearly exemplifies how a de facto resident Ontario

student may be prejudiced by the effect of an exclusionary clause, the purpose of which is to assist in the proper management of this program. The complainant is in fact, if not in law, a member of that class of individuals for whom the Ontario Student Assistance Program was created. It is, therefore, unjust that she was denied consideration for a grant in her acadamic years of 1975-76 and 1976-77 because the exclusionary clause deemed her a non-resident for this purpose. As the time spent in university could not have been taken into consideration, the complainant never became eligible, notwithstanding the fact that she otherwise qualified.

Therefore, pursuant to Section 22(1) of The Ombudsman Act, it was the opinion of the Ombudsman that the decision of the Minister of Colleges and Universities which denied the complainant a grant for the academic years of 1975-76 and 1976-77 was in accordance with a Regulation, the interpretation of which may be wrong or if the interpretation is not wrong, the decision is in accordance with a provision of an Act that is unjust. Accordingly, the following recommendations pursuant to Section 22(3) of The Ombudsman Act were made:

"1. That the interpretation of Ontario Regulation 115/75, section 1(g) which caused [the complainant's] application for Ontario Student Assistance to be refused, be reconsidered; or in the alternative,

2. That Ontario Regulation 115/75, section 1(g) be reconsidered and amended retroactively to August 31, 1975 so that [the complainant] would have been eligible to qualify for a grant for her 1975-76 academic year and 1976-77 academic year; and

3. That following the acceptance of one or two above, [the complainant] be considered for Ontario Student Assistance on the basis of her applications in her respective eligible years nunc pro tunc."

The Minister responded to our final report rejecting our recommendations that the Student Assistance regulations be amended to allow the complainant to qualify and receive assistance nunc pro tunc. However, he further stated that the recommendations raised in our report would be taken into consideration when the new Ontario Study Grant Plan for the academic year 1978-79 was formulated. (The revised Ontario Regulations 638/78 concerning residency requirements for

qualifying under the new Ontario Student Assistance Program would now permit an individual in the complainant's position to qualify for a grant. This is so as the time spent in a post-secondary institution is now not excluded from the determination of an applicant's residency requirements.)

Pursuant to Section 22(4) and 22(5) of The Ombudsman Act, a copy of our report and recommendation was forwarded to the Premier. His response did not state that any steps would be taken to implement our recommendations. The complainant was then notified that her complaint would be included in our next Report to the Legislature for the consideration of the Assembly.

DETAILED SUMMARY NO. 3

In April of 1978, a student at an Ontario university visited our Office to seek assistance after he had been refused further financial assistance under the Ontario Student Assistance Program (O.S.A.P.) administered by the Ministry of Colleges and Universities.

The complainant had been in continuous study since 1973 to obtain his Bachelor of Arts Degree during which time he had received financial assistance through O.S.A.P. In September, 1977, the complainant met with the Director of Student Awards to discuss his academic progress. Following this discussion, the Director wrote to the complainant confirming that the complainant had taken longer than the majority, if not all, of the students in the program. However, in consideration of the fact that the complainant felt that he would complete his program by the end of 1977, the Director authorized financial assistance for one more semester but stipulated that after December, 1977, the complainant would not receive further assistance for a period of at least two years. The complainant did not complete his studies by the end of 1977 and his appeal for further assistance was denied by the Minister.

After receiving the Ministry's response to our notice of intention to investigate, the investigator conducted research into the relevant legislation. Section 5(c) of Regulation 914/76 of The Ministry of Colleges and Universities Act states:

> "The Ministry may refuse to make a grant to an applicant, . . .
> (c) who in the opinion of the Minister after consultation with the eligible institution or eligible institutions,

at which the applicant has been enrolled, has not made satisfactory progress in a programme of study after spending at least a period of two academic years at such eligible institution or eligible institutions."

In making his complaint to us, the complainant contended that the Minister had not consulted with the university in question. However, our investigator ascertained that several contacts had been made by the Minister via officials of his Ministry.

It was the complainant's view that what was important was not the time it was taking to complete his B.A., but the satisfactory progress he was making in a particular experiment which had a slow maturation process. The Ministry, on the other hand, was of the view that satisfactory progress in a program of studies meant advancement toward completion of studies within a time period and financial assistance was given only where such advancement was shown. Our investigation revealed that although there was no specific time limit for completion of the program, the accepted period of study was 3 to 5 academic years or 6 to 10 terms. New regulations were being formulated whereby the duration of the program would be 8 terms with a possible 2 term extension. The complainant had completed 13 terms as of December, 1977. We were also advised by the university that although the complainant's experiment was a difficult one, it appeared that he had taken too long to complete it.

It was also determined that since September, 1973, the complainant had received $6,150 in Canada Student loans and $10,000 in grants. Therefore, the total assistance he had received for his studies at that particular university was $16,160. In addition, it appeared that prior to his enrolment at that university, he had received a Canada student loan in the amount of $1,440.

Based on the results of the investigation, the Ombudsman concluded that it appeared that the complainant had received more than adequate support for his studies and that the Ministry's decision to deny him further assistance was not unreasonable. The complaint was therefore found to be unsupported and both the complainant and the Ministry were so advised.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 4

In January, 1976, the complainant wrote to the Ombudsman explaining that she was a single mother, raising four children and attending an Ontario university. During the 1975 summer vacation from April to June she earned $1,006. $528.69 of those earnings were deducted from her Family Benefits Allowance by the Ministry of Community and Social Services.

It was the complainant's contention that for a person like herself, whose earning ability is concentrated within a very brief period, it should be possible to earn the yearly maximum of $1200. within that short period without being penalized.

On December 20, 1976 a letter pursuant to Section 19(1) of The Ombudsman Act, 1975 was sent to the Deputy Minister advising that the Ombudsman intended to investigate the complaint. The Director of the Provincial Benefits Branch of the Ministry of Community and Social Services replied on January 28, 1977 and made reference to regulation 12(5) under The Family Benefits Act which provides for averaging of income for a mother with dependent children over a period of three months only.

During the course of the investigation, special note was taken of the regulations under The Family Benefits Act with particular attention being paid to section 12 and subsections. Without reproducing section 12 in its entirety, it provides for an income exemption of $100 a month where there is more than one beneficiary - 12(2)a(ii); averaging of gross income not exceeding three months - 12(5); and for an annual averaging of farm income - 12(4).

Telephone contact was made with the complainant towards the end of the investigation and she advised at that time that the studies towards her degree would be completed within another few weeks and that she would turn to full time employment at that point. She also stated that she no longer had a personal interest in the outcome of the investigation, but she hoped that the Ombudsman would continue with it because she felt that a change in regulations would benefit others in a situation similar to hers.

A report pursuant to section 22(3) of The Ombudsman Act, 1975 was sent to the Minister of Community and Social Services on October 26, 1977. The report reiterated the complainant's contention that her earnings should be pro-rated over a 12 month period rather than the three months as now permitted by section 12(5)(b) of Regulation 287 of The Family Benefits Act.

The report contained the following conclusions and recommendations:

> "Section 12(4) of Regulation 287 under The Family Benefits Act had the effect of pro-rating farm income on an annual basis. It would appear, therefore, that the Ministry of Community and Social Services has accepted the principle of annual averaging under certain circumstances. Since the principle has been accepted for farm income, it would appear to be reasonable to expand the pro-rating provisions of section 12 to include all seasonal workers, such as full time students, whose full time earning capacity is restricted to one or two brief periods a year.
>
> I have found the actions of the Ministry of Community and Social Services, in relation to the treatment of [the complainant's] income, have been in conformity with the Regulations. However, it is my view that this Regulation creates a hardship for seasonal workers, since the pro-rating of their full time earnings is restricted to a three month period. Therefore, I have formed the opinion, pursuant to section 22(1)(b) of The Ombudsman Act, 1975 that the Ministry's actions in deducting her income from her Family Benefits have been in accordance with a rule of law that is unreasonable and unjust.
>
> Accordingly, I recommend that the Ministry of Community and Social Services give consideration to amending section 12 of Regulation 287 under The Family Benefits Act to provide for the annual pro-rating of income for those Family Benefits recipients whose opportunity to seek earnings on a full time basis is restricted to one or two brief periods a year."

On January 11, 1978, the Minister of Community and Social Services replied disagreeing with the Ombudsman's view that the three month averaging of earnings income is unreasonable and unjust. He took the opportunity to respond to the recommendation in detail.

> "Family Benefits (FBA) is a needs tested social assistance program which provides long term support to persons who are either unable to work (i.e. disabled, blind and permanently unemployable) or who are generally not required to work (i.e. sole support mothers who wish to remain home to care for their children). Fully employed persons, on the other hand, are not eligible for FBA.

Although fully employed persons are ineligible for FBA benefits, the program does contain provisions to allow recipients to pursue part time employment without jeopardizing their eligibility. Included among these are the income averaging provisions.

Prior to 1974, there were no earnings averaging provisions for sole support mothers and income earned was calculated against an allowance in the month it was received. However, this treatment worked to the disadvantage of some mothers as they were unable to obtain employment on a steady part time basis, but could obtain part time employment at peak employment periods (e.g. Christmas). The introduction of the three month averaging provision was specifically intended to assist those persons. This provision benefited these mothers as well as those who could not, because of their employers' requirements, control their hours of work. In short, the three month provision was introduced to provide a reasonable period of time in which recipients could maximize their part time employment earnings. It was never intended to apply to seasonal workers as such.

Your letter refers to the averaging provisions for farm income and states that "since the principle has been accepted for farm income (i.e. annual averaging) it would appear to be reasonable to expand the prorating provisions of Section 12 to include all seasonal workers, such as full time students, whose full time earning capacity is restricted to one or two brief periods a year."

I believe it is necessary to clarify several points before proceeding to the general question of the reasonableness of the extension, specifically "all seasonal workers", "full time students" and "full time earning capacity."

As indicated earlier Family Benefits is a needs tested social assistance support program for persons who do not have a primary labour force attachment due to disability or child rearing responsibilities. Neither seasonal workers nor full time students per se are eligible for benefits. Seasonal workers are normally employable persons who have a definite labour force attachment but whose employment opportunities are limited by the nature of their occupation. Seasonal workers who are unable to obtain employment and whose income and resources are inadequate to meet their needs are eligible for

General Assistance (GWA), a short term unemployment relief program, but not for FBA. Similarly, full time students per se are not eligible for FBA but may, if they qualify as persons in need, be eligible for assistance under GWA.

Furthermore, fully employed persons are ineligible for Family Benefits. This is perfectly consistent with the intent of the Act which is to provide a primary source of income for persons who are either unable to support themselves or are excused from this responsibility due to family circumstances (e.g. sole support mothers). Recipients are allowed to supplement their primary source of income (FBA) with part time earnings.

Part time employment opportunities of FBA recipients are restricted by limitations on earnings and/or hours of work. In this regard I would like to draw your attention to Section 9 which permits an FBA mother to work up to 120 hours per month without losing her eligibility for an allowance. Section (4) places restrictions on farm income. The distinction reflects the difference in employment opportunities, most FBA mothers are employed at an hourly wage rate whereas there is no relationship between hours of work and income in part time farming.

I would now like to turn to the consequences of broadening the income averaging (and the hour limitations) to 12 months for FBA recipients. Your recommendation appears to be selective in orientation in that it would extend the privilege of 12 month averaging only "for those Family Benefits recipients whose opportunity to seek earnings on a full time basis is restricted to one or two brief periods a year". (i.e. only those persons who have met the basic FBA eligibility criteria and are already on the program).

One major implication of going forward with this recommendation would be to permit FBA recipients for the first time, to retain their eligibility while pursuing full time employment for an extended period of time. This could happen in two ways. For example, a sole-support mother with three children could work full time for over three months at the minimum wage while continuing to receive her maximum FBA entitlement (i.e. her yearly earnings exemption of $1,500.00 or $125.00 per month) could be applied to a shorter period in which she was fully employed).

Similarly, this same mother could be fully employed for a period of six months at $200.00 per week and still receive a monthly FBA benefit of $228.00 (i.e. $200 per week averaged over a year would reduce her monthly benefit of $457.00 to $228.00). In addition, the mother in this example would also receive FBA fringe benefits including free OHIP, Drug Benefits, and dental care.

However, I would like to emphasize that the intent of the FBA Act and the historical reasoning behind providing benefits to sole support mothers has been to provide an alternative to employment for needy mothers who are forced to raise their children alone. If the 12 month averaging were to be afforded to FBA recipients who chose the work alternative, a whole new class of recipients would be created. In effect, the FBA program would be transformed into an income supplementation program for intermittent workers. In addition, it would be difficult to restrict a program of this kind (i.e. supplementation) to sole support mothers only.

The other immediate problem with this approach is that it would create a major anomoly between mothers already on the program and those who have not yet applied. That is, only those mothers already on the program would be allowed to take advantage of the 12 month earnings averaging provision. Those sole support mothers who are outside of the FBA program would continue to be ineligible simply on the grounds that the pro-rating would be applied only to those mothers already in the program. In effect, a fully employed mother with similar economic circumstances would be ineligible for FBA. However, if she quit her job, and qualified for FBA, she could then return to full time employment, but on an intermittent basis. If the regulations were modified to obviate this situation, the program would be extended to an entirely new target group at considerably higher cost to the taxpayer. It should also be noted that it would be extremely difficult to justify such provisions for FBA recipients without providing parallel treatment for GWA recipients.

I would also like to point out that some FBA mothers have complained about the current restrictions on part time earnings. However, some of these mothers subsequently returned to the labour force as full time workers and found that their net income from full time employment was only marginally higher than the combination of FBA and part time earnings. Annualization of the earnings provision would compound the problem and create a situation which mitigates against full time employment for some mothers who would otherwise return to the labour force. In effect, it would create serious disincentives to self-support for many mothers.

In addition, if a 12 month averaging provision were implemented selectively as you suggest, it would be extremely difficult to develop criteria to determine those FBA mothers who could only take advantage of seasonal employment opportunities. It would be extremely difficult to justify the inequities that would result should this provision be allowed to some mothers and not others.

In closing, I would like to emphasize that the current provisions allowing for the averaging of earnings over a three-month period are neither unreasonable nor unjust. The FBA program was not intended as a means of support for University students who choose to work full time during the summer. In this regard it should be noted that [the claimant] is entitled to precisely the same part time earnings provisions as other FBA mothers if she chooses to exercise them. The twelve month provision should not be considered as a provision applicable to farmers as a class of workers distinct from other seasonal workers but as being applicable to FBA recipients who have part time farm income which, because of the nature of farming is limited to certain times during the year."

The Minister's letter, as quoted above, should serve to illustrate the complexity of this complaint. This file was set aside for further discussion with the present Ombudsman and his legal officers and at the time of the writing of this Report, it is still under consideration. It is anticipated that the Ombudsman will be making a determination to the adequacy and appropriateness of the Ministry's response some time prior to the Select Committee Hearings which have been scheduled to take place in late July of this year.

DETAILED SUMMARY NO. 5

This complaint was brought to the Ombudsman's attention by an M.P.P. and leader of an Ontario political party on the basis of reports made to him that there was a lack of services for francophone residents in a provincial centre for the developmentally handicapped in Eastern Ontario. The complainant previously raised the issue with the Minister of Community and Social Services. It had also been discussed with the Director of Special Services of this Office when she participated in a panel discussion at a national conference on retardation.

The complainant requested, because of the questions put to him by concerned citizens in the Eastern districts of the Province and elsewhere, that the Ombudsman investigate this matter at the centre named and any other Schedule 1 facility for the mentally retarded where there were large numbers of French-speaking residents. The complainant was of the view that a lack of French language service would create severe hardship for mentally retarded individuals whose mother tongue was French.

On April 1, 1977, a letter was sent to the Deputy Minister of Community and Social Services advising of the Ombudsman's intention to investigate this matter. The Ministry officials made a position statement with respect to the issues raised by the complainant in a letter dated April 26, 1977. They concluded, on the basis of a survey, that there did not appear to be a requirement in any of the facilities for the mentally retarded, for establishing a special French-speaking unit. They said it was a policy that all correspondence to the Government in the French language must be replied to in French.

Our investigation spanned two years. It included visits by our staff to two facilities for the developmentally handicapped in Eastern Ontario where an extensive schedule of interviews was carried out, using the services of a bilingual investigator and involving all levels of institutional staff. Residents were also consulted. Information supplied by associated organizations and data obtained from relevant reports by other agencies, was collated and reviewed.

In our investigation, it was not possible to accurately determine the number of residents in the facilities under investigation who came from homes where the mother tongue was French. Nor was it thought likely that an intensive study would reveal the number because of the residents' limitations in verbal skills, sketchy admission records, the length of the residents' admissions and rare (if ever) visits of parents. Figures provided by the Ministry indicated that of 1,493 residents in these two centres, six were considered unilingual and fifty-seven bilingual. The latter term included the residents' acquisition of "survival English" since their admissions to these centres where services were provided in English.

Neither of the centres under investigation reported receiving any complaints about the lack of French language service except in one instance which involved the completion by a francophone family of a consent form printed in English. One of the centres, having the highest per capita Francophone resident population in the Province, indicated during the Ministry's survey that there had been a demonstrated need for some kind of bilingual service. During the course of our investigation, a Developmental Services Module was instituted in a nearby community, operated and funded through this centre.

The centres visited provided services in French when an assessment of the needs of an individual or his family revealed that such a service was required. Language requirements were considered in determining a resident's programme requirements but usually secondary to his or her needs with respect to the level of retardation. Administrative and support services used English. It was said that when services in the French language were required, a total of forty bilingual staff could respond. We found that, with the exception of psychological testing, other specialized assessment procedures and social services, these staff members were not deployed in a manner which would provide a continuity of service in the French language. Random interviewing of staff members designated "bilingual" indicated a disparity in their levels of fluency. Direct care staff were hired for their capabilities in mental retardation programmes. Language ability was not part of any job description. The ability to speak French was described as an asset in advertising to recruit persons for positions in the areas of social work and psychology. However, our investigation indicated that language requirements were receiving greater attention than in the past, both at the time of a resident's admission and at six month or annual intervals when the individual's programme plan came under review.

The permanent staff at one centre under investigation was found to be augmented every school year by forty-five students enrolled in a francophone programme under the auspices of a community college. Both the college and the centre actively encouraged these students to provide services to francophone residents in French. However, there were no field placements for these students in one unit where there was a high ratio of bilingual residents. There had been an increase over the past two years in the recruitment to permanent staff of francophone graduates from the community college programme.

A staff group of about thirty at one facility, in the past year, had expressed interest in learning to speak and write French and the staff development officer made enquiries in this regard. However, French language training was not approved by the Administrator who did not feel there was sufficient need. Many of the front line staff interviewed by our investigators were in favour of preserving the centre's anglophone environment

and were not receptive to the idea that services be provided in French. They advanced several reasons: That they might be required to learn to speak French, that French-speaking counsellors might be appointed to their positions; that a requirement to speak French to a few residents would further complicate their already complex and understaffed programmes. Some staff members were openly hostile and directly opposed to any suggestion that full francophone services be provided as of right.

In the Legislature of Ontario debates, May 3, 1971, Premier William Davis assured the House that services in French would be made available in areas where there was a sufficient number of francophones. All but three of the eleven counties comprising the catchment areas for the two centres under investigation were, according to statistics contained in the Dubois Report[1], designated for bilingual services.

Several professional staff interviewed by our investigators agreed that the degree of retardation of a francophone resident might be exaggerated or over-estimated as a result of the absence of the French language in routine activities. With respect to the community college's francophone programme, it was reported to our investigators that interaction in the French language had proven very constructive to the residents' self-identification and overall performance. There apparently had been many cases in which the academic and social performance of French-speaking residents, since the advent of the community college francophone programme, had surpassed any previous performance in the English language.

It was apparent from our investigation that in the past few years the "normalization" concept of care for the mentally retarded had resulted in a large number of discharges of residents to the community and a restriction on admissions to large institutions. However, there were a number of mentally retarded persons for whom the community alternative was not possible. While the language skills of these residents were often non-existent, we felt that good communication in the language of the family might be an integral part of their individualized programmes, particularly if family members remained actively involved with them after admission.

The Ombudsman was of the opinion that, on the basis of the investigation conducted, it might be open to him to conclude that the Ministry of Community and Social Services had omitted adequate provision for bilingual services at the larger Eastern facility and that this omission might be oppressive and/or improperly discriminatory to francophone residents. The Ministry was accorded an opportunity to make representations with respect to the Ombudsman's possible advserse report, pursuant to Section 19(3) of The Ombudsman Act, 1975. In inviting the Ministry to address itself to this matter, the following possible recommendations were set out:

1. That, as a short-term measure, there be a re-appraisal of those persons on staff considered bilingual to assess their capabilities in the French language and to review their deployment within the centre.

2. That a system be instituted whereby French-speaking residents could be reliably identified.

3. That staff development programmes include a course in French for those staff members designated to provide bilingual services.

4. That, in the long-term, and in concert with recommendation number 6 of the Dubois Report[2], an indepth study be carried out involving all Schedule 1 facilities for the developmentally handicapped in areas designated for bilingual services with a view to implementing the Government's bilingualism policies in these facilities.

The Deputy Minister replied that about a year previously, his Ministry became aware of a need to reinterpret the data on francophone or bilingual residents and staff in Provincial facilities for the mentally retarded. The Deputy Minister said his Ministry's general initiatives had focussed on community living for the mentally retarded. He pointed out that this community living emphasis changed the role of the institution from one of long-term residence to one of generally short-term residence, preparatory to either community living or more permanent residence for the profoundly retarded. Having studied the issue from this new perspective, the Deputy Minister advised this Office that his Ministry intended to design a francophone unit for the largest facility in Eastern Ontario which would offer daily assistance and skills training in French while ensuring ongoing liaisons with English-speaking staff and residents. This unit was envisioned for a resident population of about seventy-five. The Deputy Minister stressed that placements in the proposed unit or transfers to it from other facilities would require the approval of the resident and/or the resident's family.

The Office was further advised by the General Manager of the Mental Retardation Facility Services Division, Ministry of Community and Social Services, that an ad hoc committee had been established at the Eastern facility to coordinate the implementation of a francophone unit at the earliest possible date. A bilingual unit director and other French-speaking staff were to be recruited and in place by a target date of mid-March, 1979. It was anticipated that the unit would be operational by April 1, 1979 and two wards filled shortly thereafter. The General Manager described an identification and selection process, involving parents, which was being implemented preparatory to residents being transferred to the francophone unit.

Having considered these representations, the Ombudsman was of the opinion that steps either taken or proposed by the Ministry had most satisfactorily resolved the issues raised by the complainant. Reports to this effect were sent to both the complainant and the Ministry.

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1. "No Problem" - Report of the French Language Health Services Task Force, 1976, Dr. Jacques Dubois, Chairman.

2. "No Problem" - Report of the French Language Health Services Task Force, 1976, Dr. Jacques Dubois, Chairman, p. 42, recommendation #6. "That, before the end of the present year, the Ministry of Health, the Ministry of Community and Social Services and the Ministry of Education appoint a full-time interministerial team, made up of three francophone specialists in the field of exceptional children;

   That such team be commissioned to investigate all aspects of care given to French-speaking exceptional children in Ontario and to formulate a plan of action which will ensure a better quality of care for exceptional children in Ontario."

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

DETAILED SUMMARY NO. 6

This complaint against the Consumer Protection Bureau of the Ministry of Consumer and Commercial Relations originated from the complainant's inability to recover a $400.00 deposit on a $1,100.00 contract entered into with a siding company which declared bankruptcy before any work was begun on the complainant's home. The complainant, upon contacting the Consumer Protection Bureau, was advised that the siding company in question had been registered as an Itinerant Seller, but that its registration had expired and was not renewed for the year in which the complainant had entered into a contract for work to be done to his home. The Consumer Protection Bureau therefore concluded that as the company was not registered with them at the time of the contract, there was nothing they could do to help the complainant. Furthermore, they informed the complainant that the insurance company who pledged the surety bond with the Treasurer of Ontario would not accept the complainant's claim as it covered a contract dated after the registration had lapsed.

Although the complainant was reconciled to the fact that he had lost his $400.00 deposit, he was concerned that the Ministry did not keep a closer check on the registration of itinerant sellers, that the company was never prosecuted for breach of Section 4 of The Consumers Protection Act and, furthermore, that its manager had been allowed to become involved in another company dealing in the same business and also not registered with the Ministry.

Following receipt of a statement outlining the position of the Business Practices Division in the matter, the file was assigned for investigation.

It was determined that after the siding company's registration expired on December 3, 1973, a registered letter was sent by the Ministry to the company advising it of this fact. Nothing further was done until December 1974 when the Ministry became aware that the company was still in operation and accordingly advised it by letters dated December 23, 1974 and February 3, 1975, that it was required to be registered under The Consumer Protection Act. In October 1975, the complainant brought his complaint to the Ministry, but did not receive a response until January 1976, at which time he was advised that the Ministry would not take any further action in this matter, a decision apparently made because the company was no longer active. The company had filed an assignment in bankruptcy on December 22, 1975, and therefore prosecution under The Consumer Protection Act would not have assisted the complainant.

During interviews with our investigator, the Registrar of the Consumer Protection Bureau expressed the opinion that it was sufficient for the Ministry to send out a registered letter notifying the company that its registration had expired. If the Ministry does not receive a response, it assumes that the company has gone out of business or that it is no longer selling in an itinerant manner. The Registrar also pointed out that given present resources, it was impossible for the Ministry to check on all such companies, and in his opinion only a small percentage of itinerant sellers were registered with the Ministry compared to the number actually in business.

Had this particular company been registered with the Ministry at the time of the complainant's contract, the latter would almost certainly have been able to recover at least a portion of his deposit, because the company would have been required to be bonded. However, at no time during the course of our investigation was it contemplated that it might be appropriate for the complainant to receive any compensation from the Ministry of Consumer and Commercial Relations.

During the investigation of this complaint, the Ombudsman tentatively came to the conclusion that due to the insufficiency of its staff, the Consumer Protection Bureau was unable to properly enforce the registration of itinerant sellers within this province. His possible recommendation was that the Consumer Protection Bureau be adequately staffed and its resources strengthened and directed to permit the Bureau to enforce consumer protection legislation as required by The Consumer Protection Act. The Ombudsman informed the then Minister of Consumer and Commercial Relations of this possible conclusion and recommendation and, pursuant to Section 19(3) of The Ombudsman Act, invited him to make representations respecting the possible adverse report.

The then Minister of Consumer and Commercial Relations, in his response, expressed the opinion that far more could be achieved by trade practices legislation such as The Business Practices Act than by any registration or licensing statute. He also suggested that the Ministry would be happy to share the results of its research into the efficiency of registration and bonding as consumer protection techniques. Hence, a meeting for this purpose took place between the Executive Director of the Business Practices Division and our investigator, but it was the Ombudsman's understanding that as of the date of that meeting, no specific research had yet been conducted by the Ministry on the subject.

Having carefully considered the representations of the Ministry and the results of the investigation conducted by his Office, the Ombudsman concluded that the Consumer Protection Bureau was inadequately staffed to enforce provisions requiring registration of itinerant sellers, and that this was detrimental to consumers who might reasonably believe that consumer protection legislation was being enforced by the Ministry. The Ombudsman accordingly determined, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the acts and decisions of the Ministry which contributed to this particular siding company's carrying on business as an itinerant seller without being registered or bonded "was in accordance with ... a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory."

Therefore, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, the Ombudsman recommended that the Ministry of Consumer and Commercial Relations should undertake research to determine the effectiveness of registration statutes. He also recommended that as long as The Consumer Protection Act remains on the statute books, sufficient personnel should be made available to ensure an adequate level of enforcement.

A subsequent letter from the then Minister of Consumer and Commercial Relations indicated that, although the Ministry did not disagree with the Ombudsman's report, it did have its own priorities and strategies. Since this was not a case in which the Premier could have rectified the problem by directing that a single action be taken, the Ombudsman decided against taking this matter to the Premier and the file was closed.

DETAILED SUMMARY NO. 7

This complainant was interviewed at our Office on April 25, 1977, at which time he complained that his driver's licence had been wrongly suspended.

On March 11, 1977, the complainant received a registered letter from the Ministry of Transportation and Communications indicating that his driver's licence had been suspended as of March 4, 1977, because payment had been made from the Motor Vehicle Accident Claims Fund for damages resulting from an accident in which the Ministry believed the complainant had been involved on July 29, 1961.

The complainant then contacted the Senior Claims Supervisor of the Motor Vehicle Accident Claims Branch of the Ministry of Consumer and Commercial Relations. He explained

that he had never been involved in a motor vehicle accident and supported this statement with his passport which indicated he had been absent in the U.S. on the date of the accident. The complainant also supported his contention by referring to the motor vehicle accident report which indicated that the man involved in the accident who had the same name as the complainant was four years older than the complainant. Nevertheless, the Ministry advised the complainant to seek legal assistance. He had already done so, but he subsequently contacted a second lawyer. On May 17, 1977, the complainant was notified that the suspension of his licence had been cancelled effective May 13, 1977, approximately two months after the initial suspension.

The complainant contended that as a result of this error, he had suffered considerable financial loss and inconvenience due to the legal expenses which he had incurred and his inability to work while his licence had been suspended.

In response to our notification of intention to investigate this complaint, the Deputy Minister of Consumer and Commercial Relations requested that an estimate of the complainant's wage loss and legal expenses be submitted with verification in order that the possibility of compensating the complainant could be investigated. This documentation was then provided to the Director of the Motor Vehicle Accident Claims Branch who notified us that the matter had been referred to their solicitor for further consideration. The solicitor then requested an opportunity to examine the complainant under oath. Accordingly, a hearing pursuant to Section 20 of The Ombudsman Act was convened in our Office so that the complainant could be questioned under oath about his expenses and losses. We were subsequently notified by the solicitor that he had been authorized to offer $1,000 out of the Motor Vehicle Accident Claims Fund in final settlement of the claim. Since this offer was not acceptable to the complainant and the Ministry was not prepared to increase the amount offered, we proceeded with our investigation.

Pursuant to Section 19(3) of The Ombudsman Act, the Deputy Minister of Consumer and Commercial Relations was advised of the Ombudsman's possible conclusions and possible recommendations. After careful consideration of the Ministry's response and further research, the Ombudsman recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, that the Ministry of Consumer and Commercial Relations compensate the complainant for his reasonable losses and expenses incurred as a result of his driver's licence having been mistakenly suspended. The Ombudsman recommended that the compensation be in the amount of $3,789.97 which reflected

the complainant's losses and expenses as accurately as possible, plus interest from December 14, 1977, the date The Judicature Act was amended to allow interest in cases such as this.

The Ministry agreed to the Ombudsman's recommendation and subsequently forwarded to our Office, through the Fund's solicitor, a cheque in the amount of $4,143.76 payable to the complainant. After having executed a General Release as requested by the Fund's solicitor, the complainant was given the cheque. The Ombudsman then forwarded a letter to the Ministry thanking its officials and the Fund's solicitor for their co-operation throughout this investigation.

DETAILED SUMMARY NO. 8

The complainant contended that the Ministry of Consumer and Commercial Relations had failed to take appropriate action under The Business Practices Act against an auctioneer from whom he had purchased a building.

In 1976, the complainant purchased from an auctioneer a prefabricated metal building which had been advertised with dimensions of 40' X 60' X 18'. When he attempted to erect the structure, he discovered that its height was 14' and not 18', as advertised. After the auctioneer refused to correct the situation, the complainant approached the Ministry of Consumer and Commercial Relations. The complainant contended that the Ministry, having advertised in the local press that The Business Practices Act provides fines and jail terms for people who deliberately deceive, mislead or lie to consumers, had advised him that the Act only allowed the Ministry to act as mediator in cases such as his.

Having received a statement of the Ministry's position following notification of our intent to investigate, our investigator reviewed the contents of the Ministry's file with the Director, Consumer Advisory Services, and the Executive Director, Business Practices Divisions. This investigation revealed that a Consumer Services Officer of the Ministry had been advised by the auctioneer that he had received the dimensions of 40' X 60' X 18' from the consignor of the building. The auctioneer further advised the Consumer Services Officer that since the building was not assembled, he had been unable to check the dimensions and had therefore used those dimensions in his advertising and on the consignment contract.

The Ministry then contacted the consignor. In his response to the Ministry's inquiry, the consignor denied

responsibility "for the obviously altered dimensions on the form supplied by the auctioneer" (the consignment contract). The consignor also enclosed the original documents pertaining to the building which indicated that the building did, in fact, measure 14' in height.

The Consumer Services Officer then advised the complainant that since the consignor and the auctioneer were alleging misrepresentation against each other, the Ministry did not have the power to order restitution in the matter. The complainant was advised to consult his lawyer to determine what remedies were available to him and the Ministry's file was closed.

In dealing with this complaint, the Ombudsman had to consider whether the Ministry had conducted a thorough investigation to determine whether either the auctioneer or the consignor had violated the unfair business practices provisions of The Business Practices Act. As the wrong dimension appeared on the auctioneer's copy of the consignment contract between the auctioneer and the consignor, it was necessary to determine whether the proper dimensions of the building had been passed on from the consignor to the auctioneer.

Our investigator interviewed an employee of the consignor who stated that she had relayed the dimensions of the building by telephone to an employee of the auctioneer. The dimensions 40' X 16' X 14' had been given to her by her employer who had quoted from memory. Afterwards, she was told by her employer that the building had an 18' wide door. When she telephoned the auctioneer to relay this information, she stated that the recipient must have misunderstood the width of the door to be the height of the building. When questioned, that employee stated that he had recorded the dimensions as relayed to him by telephone as being 40' X 60' X 18' and could not remember whether he had received more than one telephone call.

The employee of the consignor stated that she had attended at the office of the auctioneer to sign the contract but could not remember whether the document appeared unusual. The matter was further complicated by the fact that she could not find the copy of the contract which had been given to her by the auctioneer. She also advised that there had been a police investigation into the matter at the complainant's request and she thought that the document had been handed over to the police. Our investigator ascertained from the police that they had neither seen the document nor had they removed it. As the consignor's copy of the contract had disappeared, our investigator was therefore unable to ascertain whether the auctioneer's copy of the document had

been tampered with. Although there was no indication that the Consumer Services Officer of the Ministry of Consumer and Commercial Relations had made an effort to obtain and compare the copies of the contract, the Ombudsman was of the view that his conclusions would have been similar to those formed by our investigator.

The police officers assigned to investigate this matter had also concluded, after consultation with the local Crown Attorney, that there was no proof of an intent to defraud either by the auctioneer or by the consignor.

During the investigation, the complainant informed us that he had sold the building and absorbed the loss after deciding that legal action would be too costly.

Our investigation disclosed that the Ministry had attempted to help the complainant but could only act as a mediator since it was impossible to ascertain whether the incorrect building description had been caused by the auctioneer or by the consignor. The Ombudsman was therefore unable to find that the Ministry's actions in this case were "unreasonable, unjust, oppressive or improperly discriminatory" and the complaint was found to be unsupported.

DETAILED SUMMARY NO. 9

This complainant complained to our Office that he had suffered financial loss and a great deal of inconvenience due to the negligence of an employee of the Personal Property Security Registration Branch of the Ministry of Consumer and Commercial Relations.

The complainant contended that in the process of purchasing a car in August of 1975, he had visited the Personal Property Security Registration office to ascertain if there were any liens registered against the vehicle he wished to purchase. The complainant then paid the required fee for which he received a receipt and completed the Soundex Search form with the name and address of the owner of the automobile. Having been advised by the clerk that there were no liens registered against the vehicle, the complainant subsequently purchased the automobile only to have it seized five months later by a bank which had registered a lien with the Personal Property Security Registration Branch in June, 1974.

After notifying the Ministry of our intention to investigate this complaint, our investigator had several discussions with various officials of the Ministry, reviewed the contents of the Ministry's file and made copies of the

relevant documents. These documents included a photocopy of a receipt confirming that the complainant had indeed requested a search in August of 1975.

Since the complainant had discarded the original Soundex Search form which would prove that he had correctly requested the search, the complainant and his friend who had been present at the time of the search were invited to attend at our Office to give testimony under oath pursuant to Section 20(2) of The Ombudsman Act.

After officials of the Ministry had heard excerpts of the sworn testimony by the complainant and his friend, the Director of Personal Property Security Registration advised that on the basis of the information received to that date, "there is no statutory authority to pay the claim, and in my opinion no legal basis upon which the claim can be paid."

After further investigation and pursuant to Section 19(3) of The Ombudsman Act, the Ombudsman invited the Deputy Minister to make representations respecting his possible conclusions and recommendations that the complainant was led to believe that there were no liens registered against the vehicle in question and that the Ministry's decision not to compensate the complainant for the losses sustained as a result of the purchase of the vehicle was "unreasonable."

In response, the Ministry expressed its concern of setting a precedent on a claim based on verbal and conflicting evidence. In the absence of the Soundex Search form, it was difficult to prove that a search had indeed been requested with the correct information and that the clerk had failed to report a registration notwithstanding the fact that it was clearly recorded in the system.

While we agreed that it was unlikely that a clerk would have indicated that an automobile was free of liens, having found the name to be searched, it was even more unlikely that a person would have purchased a vehicle if he was told that a lien had been registered against it.

Accordingly, it was concluded pursuant to Section 22(1)(d) of The Ombudsman Act that the complainant was "wrongly" led to believe that no lien had been registered in respect of the vehicle. In addition, it was determined pursuant to Section 22(1)(b) of The Ombudsman Act that the Ministry's refusal to compensate the complainant for his losses was "unreasonable." Therefore, in accordance with Section 22(3)(g) of The Ombudsman Act, it was recommended that the Ministry of Consumer and Commercial Relations should pay the complainant for the losses sustained by him as a result of the wrong information he appeared to have received.

The Ministry responded that after reviewing our report, it was prepared to act on our findings by authorizing payment of the complainant's claim. The Ministry emphasized, however, that it did not recognize any legal liability and that the payment of the claim was not to be taken as a precedent for future claims of this nature.

DETAILED SUMMARY NO. 10

This complainant complained to us that on four separate occasions, the Liquor Control Board of Ontario (L.C.B.O.) had refused to include a foreign beer among those available to consumers in Ontario. As the foreign brewing company's Canadian representative, the complainant contended that the L.C.B.O.'s Listing Committee had failed to supply adequate reasons to justify the exclusion of this foreign beer.

After receiving the L.C.B.O.'s statement in reply to our notice of intention to investigate this complaint, our investigator discussed and reviewed with the complainant the brewing company's submission to the L.C.B.O. The material included comparative figures which indicated that Ontario does not offer as many different brands of beer from that foreign country in relation to the number of its citizens who reside in Ontario plus its annual visitors to Ontario as compared to other foreign countries. Also included was a statement to the effect that the brewing company would be prepared to spend money for advertising and promotion of its product in Ontario. In addition, the submission contained indications of interest in stocking and serving this brand of beer from numerous hotels and major restaurants in Ontario. The submission also claimed that four other beers had been listed with the L.C.B.O. between January, 1976 and December, 1977. In the complainant's opinion, this fact undermined the Board's reasons for its denial, namely, lack of storage space in its warehouses and stores and the limited shelf life of beer.

Our investigator then met with L.C.B.O. officials, reviewed the Board's file and toured the Board's warehouse facilities. He obtained financial information pertaining, among other things, to the number of cases of imported beer sold in Ontario for the fiscal period ending March 31, 1978, as well as a complete list of all imported beers listed and the number of cases sold of each of these. The financial and statistical information did not support the complainant's comparative figures.

The L.C.B.O. also supplied information which indicated that in the past three years, only one new beer had been

listed, and not four as claimed by the complainant. Two of the four referred to by the complainant were replacements and a third beer had been left off the list in January of 1976 because of a computer error and did not appear on the list until January, 1977, although it had been sold throughout that whole period.

In a letter to the complainant, counsel for the L.C.B.O. had mentioned lack of storage space and limited shelf life of beer as reasons for the rejection of the complainant's product. However, there were other reasons which, along with certain financial information, were given in confidence to our investigator and could not be released to the general public. The Ombudsman appreciated the reluctance on the part of the L.C.B.O. officials to release specific financial information to members of the general public including those wishing to apply to have products listed.

The relevant section of The Liquor Control Act which relates to this complaint is section 3(h) which states:

> "The purposes of the Board are, and it has power,
> (h) to determine the classes, varieties and brands of liquor to be kept for sale at government stores and maintain standards therefor;"

In other words, the L.C.B.O. is vested with a discretionary power. For the convenience of the general public, the Board has published a booklet entitled "Listing and Product Policy" and in it are listed general guidelines for those wishing to have products listed. On page 6, section (e) states as follows:

> "The request will be considered on the merits of the product by the following criteria:
>
> (i) Quality
> (ii) Price
> (iii) Public Demand
> (iv) Marketability
> (v) Relationship to other products of the same type already listed by the Board
> (vi) Performance in other markets."

The complainant contended that since his client's product met all of the criteria enumerated in the Product and Policy Manual, it should have been listed. While that may be the case and notwithstanding the fact that another

Board may very well have allowed this particular product to be listed, The Ombudsman Act only permits the Ombudsman to find a complaint of this nature to be supported and make an appropriate recommendation where he is of the view that "discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations." Having considered the results of the investigation conducted by his Office, including the reasons given to the investigator by the L.C.B.O., reasons which could be described as strictly business and financial, the Ombudsman was unable to find that the L.C.B.O. had exercised its discretionary powers in an improper manner as above described and, therefore, found this complaint to be unsupported.

MINISTRY OF

CORRECTIONAL SERVICES

DETAILED SUMMARY NO. 11

The Ombudsman received a letter from an inmate of a central Ontario detention centre who alleged that a fellow inmate had been handcuffed by several correctional officers and severely clubbed over the head and other parts of his body.

Two investigators interviewed the alleged victim (hereafter called the complainant) and five other inmates, reviewed Occurrence and Misconduct Reports and obtained information from senior administrative staff at the detention centre. Our investigators made a preliminary report by telephone to our Director of Correctional and Psychiatric Services in the Office of the Ombudsman who then notified the Deputy Minister of Correctional Services by telephone of the Ombudsman's intention to investigate this complaint. The Deputy Minister was also advised that although our investigation would proceed in accordance with our practice of investigating such complaints as expeditiously as possible, any statement his Ministry might wish to make on this complaint would be welcomed.

The complainant claimed that during his transfer from a living unit to the segregation unit within the institution, unnecessary force had been used by a senior correctional officer whom he alleged had hit him over the head with a billy club.

The senior correctional officer named by the complainant as his alleged assailant was advised in a personal interview that the action he had taken in the complainant's case was being investigated by the Ombudsman and he was invited to provide a statement. The officer felt that the report he had submitted to his supervisor immediately after the incident in question would serve this purpose.

During this investigation, a total of twenty-one persons were interviewed. Of this number, six correctional officers and five inmates attested to either having witnessed the incident or having been involved in it. Further records were also reviewed.

Our investigation revealed that the Superintendent had ordered a change in living units for the complainant and two other inmates for security reasons. When a unit officer attempted to effect the transfer, the complainant indicated that unless given reasons for his transfer, he would refuse to move. A senior officer, overhearing this, told the complainant that he would return to the unit to deal with

this matter after escorting another inmate. This senior officer, having collected a billy club and handcuffs, was logged back into the unit within five minutes and was accompanied by two officers from another area in the institution. At that time, the complainant was leaning against the wall in the common room flanked by three other inmates. The senior officer ordered the complainant to accompany him to the segregation area but the complainant refused to obey this order. The senior officer then grabbed him by the arm and pushed him in the general direction of the exit from the unit. After the complainant pushed the senior officer away, the two accompanying officers moved forward and one of them attempted to move the complainant forward by holding him in a "bear hug" but he struggled out of this hold. Then the two accompanying officers each held one of the complainant's arms and propelled him towards the door. As the two officers approached the exit with the struggling complainant, the corridor officer moved forward to open the door with the key. Just short of the door, the senior correctional officer delivered a single blow with the billy club to the left side of the complainant's head. After the complainant fell to the floor, he was pulled out into the corridor where he stood up and walked a few steps. The complainant was then placed face down on the floor in the corridor by the two supporting officers, handcuffed by the senior correctional officer and taken to the segregation area. A nurse was summoned but the complainant refused medical attention.

We were satisfied that it had been clearly explained to the inmates concerned that their transfers had been ordered by the Superintendent in the interests of security. In this circumstance, inmates in provincial correctional facilities are not entitled to reasons for the order being given and are obliged to comply. The complainant's refusal to do so had constituted a violation of Section 23(1)(d) of Regulation 166 under The Ministry of Correctional Services Act.

During our investigation, the witnesses attested to a general tone of unrest in the unit which had been initially occasioned by the transfers of the first two inmates and exacerbated by the manner of the complainant's subsequent removal from the unit. There was resentment shown by the general body of inmates. The complainant was described as having become very upset and agitated when he was advised that he would be transferred. It was reported that he had acted in a belligerent manner by shouting loudly, kicking the walls and directing verbal abuse towards the correctional officers in general. He used profane language in his interaction with the senior officer. The evidence suggested that the complainant had not been physically violent in the sense

that he had not assumed a fighting stance, kicked or used his fists. However, he was described as having struggled and twisted his body strongly and vigorously. The complainant admitted to having actively resisted the restraining methods which had been employed by the officers in assisting the senior officer. The weight of evidence given by the witnesses indicated that the complainant had not appeared to cease his struggles until he had been subdued by the blow delivered by the senior officer.

Section 21(a) of Regulation 166 under The Ministry of Correctional Services Act states that:

> "No employee shall use any form of violence on an inmate, except where absolutely necessary for self-defense, or in the case of assault on another inmate or employee or where it is necessary to control a rebellious or disturbed inmate, and in such cases only the minimum of necessary force may be used by the employee and a written report on the incident shall be submitted immediately to the Superintendent."

The evidence supported that the complainant's behaviour had appeared rebellious when the senior officer had used the billy club. Conservative restraint methods were tried unsuccessfully. The Ombudsman was of the opinion that in the circumstances (the proximity of some fifteen other inmates) the definitive action which had been taken by the senior correctional officer had not been unreasonable in that it had brought a potentially explosive situation under control as quickly and safely as possible. Minimal force was used in that a single blow was struck, sufficient only to stun the complainant to facilitate handcuffing.

Notwithstanding this opinion, the Ombudsman was concerned over an apparent absence of clear administrative guidelines governing the issuance and use of security equipment. The only existing instruction to staff required that they made an entry in a log book when they drew security equipment. In this case, the senior correctional officer did not comply with this instruction. It was ascertained that there had been no written requirement for a correctional officer to obtain the subjective opinion of the shift supervisor concerning the possible use of security equipment within the institution. In this case, the shift supervisor was not aware of the action taken by the senior correctional

officer until he made his report immediately after the incident. It was evident that the senior officer's action in this case caused a reaction amongst other inmates nearing riot proportions. The Ombudsman questioned the wisdom of using a billy club in the presence of a large number of inmates. However, in the absence of a clear institutional standing order covering this contingency, the senior officer could not be faulted.

Although our investigation did not support the complainant's specific contention, the Ombudsman concluded, pursuant to Section 22(1)(b) of The Ombudsman Act, that the omission of clear guidelines for the issuance and use of security equipment from the standing orders at the detention centre was unreasonable. In his opinion, the decision to use a billy club in subduing an inmate should only be made with the maximum degree of supervision after the fullest possible reporting of the facts and due consideration of alternatives.

A report was made to the Deputy Minister of Correctional Services, reflecting this finding. The Ombudsman recommended, pursuant to Section 22(3) of The Ombudsman Act, that the omission identified by our investigation be rectified by the Superintendent of the detention centre, in consultation with his staff, by developing a standing order to provide for the following:

(a) The shift supervisor to be fully apprised of any circumstances within the institution warranting the use of security equipment,

and

(b) The shift supervisor's direct authorization for the specific equipment to be issued.

The Ombudsman asked the Deputy Minister to advise him of any steps he proposed to take to give effect to his recommendation. Ten days later, the Deputy Minister replied that the recommendation was being reviewed by both the Regional Director and Superintendent of the detention centre. In a letter received after a further ten-day period, the Deputy Minister concurred that there was a need at the detention centre for clear guidelines in the use of security equipment. He advised that a set of procedures had been established at the detention centre which would be included in the standing orders to be reissued later in the year. The procedure described met the spirit of the Ombudsman's recommendation.

Since the complainant was transferred to a penitentiary during the course of the 3 1/2 month investigation by our Office, a report on the result of our investigation was sent to the complainant as a privileged communication under direction number 219 (Section 8) issued by the Commissioner of the Canadian Penitentiary Service.

DETAILED SUMMARY NO. 12

An inmate at a detention centre wrote to the Ombudsman alleging that excessive force had been used against him by a correctional officer of the Ministry of Correctional Services.

The complainant was subsequently interviewed at the detention centre and a written statement was obtained from him by our investigator. The complainant's allegation was then brought to the attention of the Superintendent of the centre who indicated that as he had been unaware of the allegation, he wished to conduct an internal inquiry prior to taking a position with respect to it.

After conducting certain preliminary inquiries and obtaining documentation concerning the incident, our Office notified the Deputy Minister of Correctional Services of our intention to conduct a formal investigation into the complainant's allegation that a correctional officer had struck him in the face through the bars of a locked security grille. In addition, the Ministry was advised of our intention to investigate a second concern raised by the complainant that he had been held in segregation for approximately ten days pending disposition of institutional misconducts arising out of the incident in question.

Prior to receiving a response from the Deputy Minister, the Superintendent of the centre advised our Office that he had completed his internal inquiry and was anxious to expedite the resolution of this matter. In view of this, the Deputy Minister was consulted and he indicated that the Ministry had no objections to our Office commencing the investigation prior to receipt of the Ministry's formal response.

Investigative staff from our Office again attended at the centre at which time staff and inmates present at the time of the alleged incident were interviewed. In addition, a further review of available documentation was underaken and the results of the internal inquiry conducted by the institutional authorities were examined and discussed with senior administrative personnel at the centre. This internal inquiry concluded that the correctional officer in question

had acted unprofessionally and had used improper force against the inmate. It was noted that the correctional officer openly admitted to both the institutional authorities and the Ombudsman investigators that he had, in fact, struck the inmate.

Upon reaching the conclusion that the correctional officer had used force in excess of that provided for under Section 21(a) of Regulation 166 made under The Ministry of Correctional Services Act, the authorities held a corrective interview with the correctional officer and the results of this interview were placed in the employee's personnel file. A copy of this "counselling in writing" was provided to our Office by the authorities at the detention centre. Although the authorities indicated that they had considered more serious disciplinary action, there were certain mitigating factors which led them to feel that counselling in writing was the most appropriate response to the situation. The mitigating factors cited included the correctional officer's inexperience as a probationary employee, his lack of basic training, the inmate's history of unacceptable behaviour and the fact that the inmate was not injured by the use of force. However, it was clearly stated to the officer by the centre's administration that improper use of force would not be tolerated and that any future incidents of that nature would result in disciplinary action and possible dismissal.

After considering the action taken by the institutional authorities and in view of the evidence which indicated that there had been a considerable degree of provocation by the inmate prior to the misuse of force, it was determined that it was unnecessary for the Ombudsman to make any recommendation as it appeared that the action taken by the centre's administration was sufficient under the circumstance. It was, however, emphasized that our Office expected the Ministry to uphold its commitment to take strong disciplinary action should there be any further occurrence of this nature involving the same correctional officer.

After review of the pertinent documentation, the complainant's second concern with respect to placement in segregation prior to the hearing of his institutional misconducts was found to be unsupported. The documentation revealed that during the period in which the complainant contended he had been held in segregation prior to the hearing of his misconducts, he was, in fact, serving punishment meted out by the Superintendent for previous misconducts.

DETAILED SUMMARY NO. 13

An inmate from a correctional centre wrote to the Office of the Ombudsman contending that he had been unreasonably dealt with by the Ontario Board of Parole in the determination of his eligibility for release under supervision. The complainant alleged that on three separate appearances before the Parole Board, he had been advised of differing requirements which had to be met prior to the Board's granting of parole.

Our investigator travelled to the institution to speak with the complainant. At the conclusion of the initial interview, the complainant signed a consent form pursuant to Section 20(4) of The Ombudsman Act.

A letter was then forwarded to the Chairman of the Ontario Board of Parole, with a copy to the Deputy Minister of Correctional Services, in accordance with the requirements of The Ombudsman Act. The Chairman was advised of our intention to investigate the complainant's concerns. In response to this letter, a meeting was convened between the Chairman of the Board and the Investigator at which time the complainant's Parole file was examined in depth.

Following his initial appearance before the Ontario Board of Parole in November, 1977, the complainant was advised that the decision to release him was being deferred until such time as a rehabilitation check could be completed. He was also advised that he would need confirmation of employment to be successful in any application for release on Parole.

The complainant's probation officer then submitted a report to the Board which indicated that an employee of the Ministry of Correctional Services was prepared to hire the complainant on the condition that this action did not contravene the policies of the Ministry. The probation officer further advised in the report that given the complainant's skills in the lumber industry and his contacts in the area, he would not have any difficulty in securing permanent employment.

One month later, the complainant appeared before the Board again. At the conclusion of this hearing, he was advised that his plan of employment was not suitable since it contravened Section 22 of The Ministry of Correctional Services Act, 1974. The complainant was further advised that he would require another confirmed plan of employment and accommodation prior to any further consideration by the Board.

The Board then received a subsequent report from the probation officer stating that given the nature of the complainant's experience and the type of work available, it was his opinion that the complainant would be successfully employed although it would be difficult to prearrange for labouring positions. At that time, the Board was also in possession of a report from the institutional psychologist which stated that the complainant's behaviour and work performance were reported to be excellent by the unit staff.

The complainant's case was again reviewed by the Board one month later and notwithstanding the above information, it was their decision that they would not release the complainant under supervision. The reasons stated at that time were that he had no confirmation of accommodation, had a problem with alcohol which had been a factor in his criminal offences, had a prohibitive record, and had not taken treatment while incarcerated.

Two specific issues were examined in depth by the investigative staff of the Office. The specific issues were:

(a) The practice which led up to the Board's decision was unreasonable, unjust, oppressive or improperly discriminatory

and

(b) The Board's decision to deny the complainant Ontario Parole was unreasonable.

Although the members of the first and second Parole Board hearings were aware of the complainant's previous record and his involvement with alcohol during the commission of the offence, they did not give these facts as reasons for denial of parole. The second Parole Board advised the complainant that he would need confirmation of employment prior to consideration for release in spite of the fact that the local probation officer had advised them that it would be difficult to secure this information. The third Board indicated that, among other reasons, parole had not been granted due to the fact that he had not taken treatment while incarcerated despite the fact that the psychologist's report did not indicate any need for treatment.

With respect to the first issue mentioned above, it was determined that it would be open to the Ombudsman to conclude that the actions of the Ontario Board of Parole had been unreasonable and improperly discriminatory as the complainant

was advised on three separate occasions of differing requirements which had to be met prior to his release on parole. Accordingly, a letter pursuant to Section 19(3) of The Ombudsman Act was forwarded to the Chairman of the Ontario Board of Parole indicating that it would appear that it might be open to the Ombudsman to recommend that in all cases where Parole is not granted, available reasons for the non-issuance of the Certificate should be given to the applicant in writing following the initial hearing.

At the request of the Chairman, a meeting was convened between himself, the investigator and a legal officer from the Office of the Ombudsman. At that time, the Chairman indicated that he was in general agreement with the proposed conclusion and recommendation specified in the Ombudsman's letter. He advised that the proposed Regulations pursuant to The Ministry of Correctional Services Act, 1978, would be incorporating much of the recommendation. Further, it was agreed that the proposed recommendation in its final form should read:

> "In any case where it is immediately apparent that the applicant has a prohibitive record, or a particularly serious offence, he must be advised that these factors may preclude his release on parole, notwithstanding confirmation of employment and accommodation."

With respect to the complainant's contention that the Board's decision to refuse his Parole was unreasonable, the Ombudsman determined that upon consideration of the factors in his case, the complaint could not be supported. The complainant had a previous record of sexual offences, was presently serving sentence for a similar offence and release plans were such that close supervision would be impossible.

In conclusion, therefore, it was the Ombudsman's decision that the process involved in leading to the Board's final decision in the complainant's case was unreasonable; however, the decision itself must be supported.

DETAILED SUMMARY NO. 14

An inmate at a correctional centre complained to the Ombudsman by letter that the decision of the Ontario Board of Parole to deny his parole had been unreasonable.

The complainant advised that following his appearance before the Ontario Board of Parole, he had been advised in

writing that parole would not be granted because the Board wished further clarification regarding his handling of an alcohol problem and the members of the Board wanted him to have more definite prospects for employment.

After being interviewed at the correctional centre by our investigator, the complainant signed a consent form pursuant to Section 20(4) of The Ombudsman Act which permitted the investigator to review his institutional file. This examination revealed that the complainant had been recommended for parole by all institutional staff, including the Superintendent, treatment staff, work boss and institutional psychometrist. The complainant was also involved in an impaired driving course which commenced five days after his parole hearing. It was reported that the complainant was doing extremely well in the course. In addition, it was noted that the complainant was involved in therapy with a volunteer and was receiving financial counselling. With respect to his personal life, it was confirmed that he had been receiving regular visits from a woman who was known to be his financee. A review of the complainant's bail papers revealed that he had been remanded out of custody for five months prior to his conviction and sentence. He had therefore successfully completed a period of being under supervision in the community.

In order to ascertain the position of the Ontario Board of Parole, it was deemed appropriate that the investigator meet with the Chairman of the Ontario Board of Parole. At this meeting, the complainant's institutional and parole files were reviewed. From this review, it became apparent that there was a discrepancy between the two files in that the Parole file lacked certain psychological reports. Upon commencing sentence, the complainant was transferred to an assessment and treatment facility in the Province. The report summarizing his stay in the facility indicated that he should be considered for transfer to a minimum security setting where the complainant was subsequently serving his sentence. It was determined that he would not benefit from an extended stay in the assessment and treatment unit. Instead, the complainant was encouraged to attend Alcoholics Anonymous and to receive counselling with particular emphasis on marital relationships, life skills and pre-release planning. With the exception of attending Alcoholics Anonymous, the complainant completed the assessment plan. The complainant contended that he had not joined the Alcoholics Anonymous group in the institution because the majority of the participants were "young kids" who attended the meetings merely as a get-together and were not seriously interested in dealing with their alcohol problems.

After considering the information relayed during the meeting, the Chairman advised that he would request that the Board responsible for the area where the complainant was incarcerated review his application.

A letter was subsequently received by our Office from the complainant indicating that his case had been reviewed and parole was to be granted. The complainant expressed his appreciation for the assistance which had been provided by our Office.

DETAILED SUMMARY NO. 15

An inmate at a correctional institute complained to our Office that he had twice been denied permission to obtain several educational books by mail order.

Our investigator subsequently visited the institution and interviewed the inmate. It was ascertained that the complainant had originally filed a written request with a senior institutional official to purchase nine books relating to radar principles; lasers; electronics; ultrasonics; physics and astronomy; mathematics and statistics; crafts, games and hobbies with electronics; and chemistry. The complainant indicated that he was interested in these subjects as he wished to enroll in comparable college courses upon his release. After the initial request was denied, the complainant personally discussed this matter with the Deputy Superintendent. At that time, he was advised that the subject matters of several of the books were considered to be a security risk and that the books were considered to be of no value to his rehabilitation.

Our investigator then discussed this matter with the Deputy Superintendent who reiterated his reasons for denying the request.

Following his visit to the institution, the investigator made an inquiry with one of the other institutions and ascertained that some of the subjects contained in the reading material which had been requested by the complainant were actually taught at that institution. These subjects included electronics; physics and astronomy; mathematics and statistics; chemistry; and crafts, games and hobbies. The other three subjects requested, radar principles; lasers; and ultrasonics; were not part of the approved course of study or reading materials approved for institutions for security reasons.

This information was then relayed to the Superintendent of the correctional institution in question. Our investigator suggested that the complainant be allowed to purchase the books which related to courses taught at the other institution. The books could then be censored upon their arrival at the institution and any unacceptable ones could be placed with the inmate's personal possessions and withheld until his release from custody.

The Superintendent agreed to allow the complainant to purchase the acceptable books and the complainant was subsequently informed of the outcome of our investigation.

DETAILED SUMMARY NO. 16

In his correspondence to the Ombudsman, this inmate contended that the court had ordered that he should serve his sentence in an alcoholic treatment unit but officials of the Ministry of Correctional Services had indicated to him that they were not aware of this order.

In attempting to arrange an interview with the complainant, our investigator discovered that the complainant had been transferred from the detention centre where he had written his letter of complaint to a correctional centre and subsequently to a second detention centre all within a three-week period.

When the complainant was finally interviewed by our investigator, he advised that he had been convicted of being intoxicated in a public place and had been sentenced to a term of up to ninety days in a centre for the reclamation of alcoholics. The complainant stated that he had complained to staff at the three different centres but had been advised that his information was incorrect.

In order that our investigator could review his institutional file, the complainant signed a consent form pursuant to Section 20(4) of The Ombudsman Act.

An examination of the Warrant of Committal in the complainant's institutional file revealed that he had been sentenced pursuant to Section 38 of The Liquor License Act, 1975, for violation of Section 46(3), being intoxicated in a public place. Section 38 of The Liquor License Act states in part that:

> "Where it appears that a person in contravention of subsection 3 of section 46 may benefit therefrom, the judge may order the person to be detained for a

period of 90 days or such lesser period as he thinks advisable in an institution for the reclamation of alcoholics... ."

Prior to leaving the facility, the investigator brought her initial findings to the attention of the senior institutional official. This official discussed the situation with the Regional Director for the area and that afternoon, the Investigator was advised that the complainant would be transferred to an institution for the reclamation of alcoholics the next day.

DETAILED SUMMARY NO. 17

An inmate wrote to the Ombudsman alleging that his three-piece suit had been damaged while he was incarcerated at a correctional centre. He felt that the Ministry of Correctional Services should accept liability and offer restitution for this damage.

The complainant stated that he had noticed the damage to his suit trousers while he had been dressing in the Admissions and Discharge area of the correctional centre to await transfer to a jail in order to facilitate his court appearance.

After the complainant had returned to the correctional centre following his appearance in court, he was interviewed by our investigator who then examined the suit. Although it had been cleaned upon the complainant's return to the correctional centre, the investigator noted the marks on the trousers of the suit. Our investigator then discussed this matter with the supervisor of the laundry and a senior administrative official and it was decided that an attempt would be made to remove the marks with a special cleaning solution. After this proved unsuccessful, the Superintendent initiated an investigation to ascertain whether the cleaning method employed by the centre was responsible for the damage. Our investigator was subsequently informed that the damage to the suit trousers might have been caused by the cleaning process and that the institution was prepared to accept responsibility. During a personal discussion between the complainant, an administrative official of the centre and the investigator, it was agreed that the institution would replace the trousers assuming a reasonable match could be made to the rest of the suit or an equivalent cash settlement would be made to the complainant.

MINISTRY OF

CULTURE AND RECREATION

DETAILED SUMMARY NO. 18

This complaint concerns Wintario grants, a program administered by the Ministry of Culture and Recreation to provide financial assistance to non-profit organizations.

A professional entertainer contended that large Wintario grants which had been given to a non-profit entertainment foundation by Wintario for equipment and audience development were being re-directed to a profit-making corporation. The complainant contended that entertainers from the corporation were being hired by the foundation with money which the foundation had received from Wintario. These entertainers were permitted to use the foundation's equipment which had been purchased with Wintario grant money. In addition, the directors of the profit-making corporation were also the directors of the non-profit entertainment foundation. Thus, the complainant alleged that Wintario funds were directly profiting a private business. He contended that much of the business normally given to individual entertainers such as himself was going to the profit-making corporation. He believed this to be a misuse of Wintario funds and unfair to him.

After the Ministry's response to our notice of intention to investigate was received, our investigator met with the Director, Information Services Branch of the Ministry of Culture and Recreation, to discuss the Wintario Policy Manual. She also met with the Projects Officer of the Arts Services Branch to review the Ministry's file on the applications made by the foundation for Wintario grants. Following another meeting with the complainant, our investigator and a member of our legal staff met with the Assistant Deputy Minister and the Projects Officer to discuss the complaint in detail.

The relevant conditions for funding described in the Wintario Policy Manual were as follows:

1) Wintario grants are "excluded from situations which might be loosely categorized as private gain."

2) Portable arts equipment and audience development grants are available to non-profit organizations which have been in existence for at least one year.

3) Applicants must be able to contribute at least 50% of the cost of the project from private sources.

4) Applications must include a financial statement of the group for the past year. (The application form clearly states audited financial statements are required.)

Our investigator ascertained that the foundation had received grants prior to its becoming incorporated as a non-profit corporation and before it had been in existence as a non-profit corporation for one year. The Executive Director of the Finance Administration Division had expressed his concerns regarding this application, as it had appeared that a "dummy" non-profit foundation was being set up from which any excess funds could be siphoned off into the profit-making corporation. A review of the Ministry's file also indicated that the solicitor for the Ministry had felt that a means for ensuring that the funds would not be directed to a profit-making corporation would be "to ensure that the Letters Patent do not permit it." There was a suggestion that this be made a condition and the entertainment foundation was requested to forward copies of the Letters Patent. However, the Ministry never received them.

Although the application form clearly stated that an audited financial statement for the current year, and one or more from previous years, if available, were to be attached, the Ministry received only unaudited statements from the foundation.

These financial statements indicated that when the foundation had commenced operations, they consisted of supplying performing equipment to the corporation. They also indicated that the foundation rented performing equipment as required by the corporation and in the year that the foundation was indebted to the corporation, it waived rental on the use of such equipment.

The financial statement for the corporation stated that when the corporation commenced to operate the business of supplying performers, it rented performance equipment from the foundation. It also indicated that during the year the foundation was in debt to the corporation, the foundation waived rent for the equipment used. These financial statements did not detail the charges for the corporation's rental of equipment from the foundation and it was not certain whether advances to the foundation in fact covered the cost of such rental.

In the following year, the foundation applied for another equipment grant as well as for an audience development grant. Again, no audited financial statements accompanied the applications.

Wintario (in conjunction with the Ontario Arts Council) approved grants to the foundation in the amount of $20,000 for audience development and $55,000 for equipment. In recommending these sums, the Ontario Arts Council was aware of the precarious financial status of the foundation, yet no steps were undertaken by the Ministry to obtain audited financial statements and concrete assurances that the 50% principle would be met. It was not until some time later that the Ministry wrote to the foundation advising that a certain portion of the grant would be released only on the condition that "within 90 days, the Wintario office of Arts Division must be in receipt of audited financial statements as of July 31, 1977 with no qualifications attached from the corporation and the foundation." The statements were also to "clearly indicate what capital assets existed and in particular, those purchased with Wintario assistance." The Ministry also required "a more detailed listing of what equipment would be purchased with the remaining portion of the Wintario grant." At the time of our investigation, no audited financial statements had been received by the Ministry.

Ministry officials advised our investigator that Wintario does random audits of grant recipients. However, no audit of this foundation was done.

After careful consideration of all the accumulated evidence, the Ombudsman notified the Deputy Minister of Culture and Recreation, pursuant to Section 19(3) of The Ombudsman Act, that it appeared that the Ministry had not adhered to its policies in granting Wintario monies to the foundation. The Ombudsman indicated that it might be open to him to recommend that:

1. The Ministry perform an audit of the foundation's books and take appropriate action should it appear from the audit that the funds were not being used in accordance with Wintario's conditions.

2. That the Ministry take steps to ensure that Wintario grants to non-profit foundations are not used by, or passed down to, profit motivated businesses which would not be entitled to such grants according to Wintario's policies. These steps might include adhering to the rule requiring audited financial statements, requiring a certificate or sworn statements, requiring a certificate or sworn affidavit from the foundation's directors that funds are not being directed to the business, requiring proof of how the grants are being used and audits by the Ministry of the foundation's books.

The Ombudsman also invited the directors of the foundation to make representations respecting these possible conclusions and recommendations that might adversely affect them.

In his reply to the Ombudsman, the Deputy Minister stated that steps had already been taken to ensure that grants to non-profit bodies were not being used by or passed on to profit-making organizations. He advised the Ombudsman that he had directed the Ministry's Chief Internal Auditor to perform an audit of the foundation in order to determine the extent of compliance with Wintario grant criteria. He also assured the Ombudsman that should the audit reveal such criteria were not being met, appropriate action would be taken. In addition, the Deputy Minister indicated that other steps were being taken to ensure that only qualified applicants receive Wintario funds and that some of these steps might include those proofs and assurances suggested by the Ombudsman.

After having also considered the representations received from the foundation, the Ombudsman concluded that no further investigation of this complaint was required.

DETAILED SUMMARY NO. 19

This complaint came to the attention of the Ombudsman as a result of one of our ongoing visits to the Indian Reserves and settlements.

The Chief of the Indian Band complained that the application of the Band for Wintario funding had been denied by the Ministry of Culture and Recreation.

The complainant advised our Co-ordinator of Regional Services that he had been in consultation with Ministry officials regarding the availability of grants for completion of the Band's community hall extension and also for the completion of the sporting complex on the Reserve. A Senior Consultant in the Ministry's Regional office advised the Band of the necessity to make the Capital Grant application prior to December 31, 1978. Since the Band had experienced difficulty in making a previous application for funding, the Senior Consultant also advised the Chief that he would make himself available to assist the Band in the preparation of its application. The Chief called the Ministry's regional office on December 22, 1978, to request that the Consultant meet with the Band in order that it could correctly make application before the deadline. However, the complainant was informed at that time that the Consultant was on vacation

and would not return to the office until January 2, 1979. The Chief then telephoned the Senior Consultant on January 2, 1979, but he was informed that since the deadline had passed, he was precluded from making application.

The complainant then wrote a letter to the Minister of Culture and Recreation seeking an extension of the time to apply for the grant, but he did not receive an answer.

The Deputy Minister was subsequently notified of our intention to investigate this complaint pursuant to Section 19(1) of The Ombudsman Act. A reply was received from the Deputy Minister enclosing a copy of a letter from the Minister to the Chief which granted permission to the Band to submit their Wintario application after the deadline. At the Minister's discretion, the Band was allowed to make retroactive application although the Ministry's Senior Consultant had acted according to existing policy when he informed the Chief that the Band's application was too late to be accepted.

In subsequent conversations with the Co-ordinator of Regional Services of our Office, the Chief expressed his satisfaction with the resolution of his complaint and his appreciation for the co-operation extended by the Senior Consultant in the past.

MINISTRY OF

THE ENVIRONMENT

DETAILED SUMMARY NO. 20

The complainant contacted our Office in January, 1978, with a problem concerning the Ministry of the Environment.

In July of 1974, a grant of easement was signed by our complainant providing the Ministry of the Environment with the authority to use a section of his property for the construction of a municipal sewage treatment plant. In addition, the Ministry also made an arrangement with the complainant whereby the Ministry was authorized to construct an underground pipe line across his property. Following the construction, the complainant met with the Ministry representatives to discuss what action was required to restore his property to its previous condition. The agreement that was reached included the restoration of his underground water sprinkler system and the hydro line.

However, in the spring of 1975, the complainant discovered that the sprinkler system which was severed during the construction the preceding fall had not been repaired. It was necessary for him to affect the repairs himself and he subsequently attempted to recover the costs from the Ministry.

The Ministry offered the complainant a settlement of $500 for the costs which he had incurred for the repair of the sprinkler system. The complainant contended that this amount was inadequate since he had submitted three estimates of the costs to the Ministry in the average amount of $620.

After the Ministry's statement in response to our notification of intent to investigate was received, our investigator met with the complainant and reviewed the documentation with regard to this matter. He then met with Ministry officials, reviewed the Ministry's file and obtained relevant information pertaining to this complaint. In reviewing the Ministry's file, our investigator found a letter dated June, 1974, from the complainant to the Ministry of the Environment stating that the pipe and Hydro wire from his pump house to the sprinkler system was to be restored. However, the Ministry had never acknowledged this letter.

At a subsequent meeting with the Executive Assistant to the Deputy Minister, our investigator outlined the information he had obtained and asked if the Ministry would consider re-evaluating the complainant's claim.

The Ministry responded in a letter to our Office in October of 1978 that it was prepared, without prejudice, to reimburse the complainant for his expenses in the full amount of $620.

The complainant subsequently wrote to our Office expressing his gratitude for our assistance in the resolution of his complaint.

MINISTRY OF

HEALTH

DETAILED SUMMARY NO. 21

This summary deals with the same type of complaint received from two different complainants concerning the position taken by the Ontario Health Insurance Plan not to reimburse them for the costs of physicians' services rendered out of the Province of Ontario.

In the first case, the complainant who was born with cerebral palsy underwent an operation for a cerebella stimulator implant in the United States since this procedure was not available in Canada. The Ontario Health Insurance Plan (the Plan) paid 100% of hospital expenses. However, his medical expenses which included the American physician's fee were $2,234.00 of which the Plan paid $315.00. The complainant subsequently appealed this amount to the Health Services Appeal Board which increased the reimbursement to $382.50. The complainant contended that he had been given oral assurances by a Plan offical whom he could not identify that the Plan would reimburse him for all medical expenses.

The Deputy Minister replied to our notification of intent to investigate stating that the surgical procedure involved was not listed in the Ontario Medical Association (O.M.A.) Fee Schedule. The hospital bill was paid by the Plan at 100% because this service was not available in Ontario. However, the O.M.A. advised that the service when approved would be rated at a fee of approximately $350.00. On this basis, the General Manager of the Plan approved payment for the complainant's surgery at 90% of $350.00 ($315.00) against the total amount billed by the American surgeon which was $2,234.50. It was added that The Health Insurance Act did not provide for any further payment than what was made to the complainant.

The second case involved a complainant's wife who was suffering from a tumour on the pituitary gland. Before she entered a hospital in the United States to receive proton beam therapy treatment, the complainant received a total estimation from the American hospital that the cost of this treatment would be approximately $4,755.00. Included in this estimate was the American physician's fee of $1,600.00. When the complainant consulted the Plan to ascertain what percentage of the cost would be covered by the Plan, he was advised that since the O.M.A. Fee Schedule did not include such a procedure, all hospital benefits for this service which was not available in Ontario would be paid at 100%. However, the complainant would likely only receive $427.50 from the Plan towards the physician's fee of $1,600.00. The figure of $427.50 was estimated by comparing the procedure to an excision of the pituitary gland which the O.M.A. Fee Schedule rated at $475.00. A subscriber of the Plan who underwent this procedure in Ontario would receive reimburse-

ment from the Plan at 90% of $475.00 or $427.50.

After lengthy investigation, the two complainants were advised that as the Ministry of Health had paid the appropriate amounts in accordance with the legislation under which it operates, the Ombudsman was unable to support their complaints insofar as the complainants believed they were entitled to be compensated for the doctors' fees. However, because the Ombudsman was of the view that these complaints raised an important issue, he wrote to the Deputy Minister outlining his concerns as follows:

> "I understand that the rationale for limiting recovery under the Plan in this way is primarily a financial one. That is, insured services are much more expensive outside of Ontario and to keep the cost of the Plan as low as possible, insured persons should obtain medical treatment in this Province. I am in complete agreement that the Ontario taxpayer should not be expected to pay for the extremely high fees charged by many foreign physicians. However, circumstances may often arise in which these regulations may work a great hardship on certain residents of Ontario. Such hardships have been the subject of several complaints, and concern insured persons who claim they must seek medically necessary treatment elsewhere because it is not available in Ontario. Under the present law, the Plan is only able to pay the small portion of such invariably expensive treatment. The balance of the physician's fees must then be borne by the insured person or his family.
>
> "It is clear that those who have made such a complaint believe it is unfair that the Plan may not pay for insured services which were, in their opinion, medically necessary. On its face, there may be merit to this position. Most subscribers to the Plan probably believe that if they need medical treatment which is only available outside of Ontario, that the Plan would pay for a substantial part of the cost of such treatment. In reality, of course, this is not the case.
>
> "Perhaps there should be some mechanism available in The Health Insurance Act to

> enable the Plan to determine whether an insured person can receive medically necessary insured services out of Ontario. It may be that such a function could be delegated to the Medical Review Committee or the Medical Eligibility Committee which could approve or recommend to the General Manager of the Plan that he approve payment for insured services out of the Province. I do not suggest, however, that the Plan should necessarily pay 100% of the cost of this treatment, as this would be giving this class of insured persons a greater benefit than those who receive insured services in Ontario.
>
> "Although I am concerned about this matter, I have not formed any opinion and I would greatly appreciate receiving your response to this concern. If you are of the view it would be more appropriate, I would be pleased to meet with you so this matter could be discussed further."

In his response, the Deputy Miniter stated that there were very few medically necessary services or procedures which were not performed in Ontario. He advised that in cases where a service was unavailable in Ontario, the General Manager of the Plan checked with the O.M.A. and requested advice on an appropriate fee. He also added that the Plan had had discussions with the O.M.A. concerning this problem and a bulletin had been issued to all physicians as follows:

> "Occasionally patients are referred out of Ontario for medical services which referring physicians believe are not available in this Province. To ensure that patients do not incur greater than necessary personal expense (bearing in mind that O.H.I.P. pays on the basis of the O.M.A. Fee Schedule and that fees in the U.S.A. are often considerably higher, it is recommended that before referring patients outside Ontario doctors check with the O.M.A. office to determine whether the needed medical service is available in the Province."

After further consideration and pursuant to Section 19(3)

of The Ombudsman Act, the Ombudsman advised the Deputy Minister of the following possible conclusion and recommendation:

> "Possible Conclusion:
>
> It would appear that it might be open to me to conclude that the decision not to reimburse that limited class of individuals who must bona fide seek necessary medical treatment outside the Province of Ontario more than 90% of the Ontario Medical Association Fee Schedule may be in accordance with a provision of The Health Insurance Act that is or may be 'unreasonable, unjust, oppressive or improperly discriminatory' within the meaning of section 22(1)(b) of The Ombudsman Act.
>
> "Possible Recommendation:
>
> It would appear that it might be open to me to recommend that the Regulations made pursuant to The Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the Director of the Plan have their medical fees, incurred for insured services performed outside Ontario, paid for by the Plan."

In his response, the Deputy Minister stated:

> "As I mentioned in my August 17, 1978 letter to you, there are very few medically necessary services or procedures which are not performed in the province of Ontario. In those few instances in which a service is unavailable in this province, the General Manager checks with the Ontario Medical Association requesting the advice on an appropriate fee. The amount suggested is then used to reimburse the patient. The United States do not have a common fee schedule as is used in Ontario and the charges are often quite out of line with Ontario rates for comparable services.
>
> "In short, I do not agree that the recommendation being considered would improve the current system and that it

> is just as 'unreasonable, unjust, oppressive or improperly discriminatory' as the present system."

After careful consideration of all the Ministry's representations, the Ombudsman reported his final conclusion and recommendation as follows:

> "I have carefully considered Mr. Backley's representations and indeed all the comments made by the Ministry of Health to the Office of the Ombudsman during the course of investigating these complaints. Based on the investigation conducted I am of the opinion that the decision not to reimburse those individuals who must bona fide seek necessary medical treatment outside the Province of Ontario more than 90% of the O.M.A. Fee Schedule is in accordance with a provision of The Health Insurance Act that is "unreasonable" and "oppressive" within the meaning of section 22(1)(b) of The Ombudsman Act.
>
> "I would accordingly recommend that the Regulations made pursuant to The Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analogous service listed in the O.M.A. Fee Schedule."

The Deputy Minister then responded by indicating that the recommendation contained in the report of the Ombudsman could not be implemented through an amendment to the Regulations alone and would require an amendment to The Health Insurance Act itself.

After the Ombudsman submitted an amended recommendation which overcame the difficulty indicated by the Ministry, the Deputy Minister of Health informed the Ombudsman that the Ministry was not in a position to implement the Ombudsman's recommendation. Accordingly, the Ombudsman forwarded a copy of his report and recommendation to the Premier pursuant to Section 22(4) and 22(5) of The Ombudsman Act. Subsequently, the Premier acknowledged receipt of the report.

DETAILED SUMMARY NO. 22

This complaint was brought to the Ombudsman's attention by the representative of a certain religious group in Ontario. It involved two Ministries, the Ministry of Consumer and Commercial Relations and the Ministry of Health. The group's complaint against the Ministry of Consumer and Commercial Relations was that insurance companies in Ontario did not recognize for purposes of reimbursement the type of care and treatment given by members of the group to fellow members, because under Schedule E of The Insurance Act only conventional medical and rehabilitation expenses are awarded. The complainant pointed out that in the U.S.A. this type of treatment was recognized by all large insurance companies and members of this religious group were reimbursed for any treatment they received. The group's complaint against the Ministry of Health was that the Ministry did not recognize this type of nursing nor did it recognize the group's care facility for reimbursement by OHIP.

After receiving the Ministry of Consumer and Commercial Relations' statement in reply to our notice of intention to investigate this complaint, our investigator met with the Superintendent of Insurance. She was advised that the Select Committee on Company Law had considered various submissions on the question of coverage for this type of treatment and had concluded that the group did have a valid argument. As it appeared that this complaint would be rectified if the Select Committee's recommendations were to be adopted, the Ombudsman decided not to investigate this aspect of the matter any further.

The Ministry of Health was also notified of our intention to investigate the second complaint and we subsequently received a statement of the Ministry's position from the Deputy Minister.

A review of the Ministry's file and a meeting with the Executive Director, Institutional Division, revealed that benefits paid under OHIP are specifically set out under The Health Insurance Act and the regulation passed pursuant to that Act. No benefits are allowed for the type of treatment and care involved in this complaint, although members of this particular religious group receiving ordinary medical care are being reimbursed like all other Ontarians. Under present legislation, a patient has to be under the care of a legally qualified medical practitioner in an institution approved as a hospital under The Public Hospitals Act or The Private Hospitals Act, to be eligible for OHIP hospitalization benefits. Part of the definition of a hospital is that it is staffed by legally qualified medical practitioners, who are subject to control under The Health Disciplines Act. As the practitioners looking after the

patients in the group's care facilities are not legally qualified medical practitioners, the places wherein they practise cannot be considered hospitals. Therefore OHIP is unable to reimburse subscribers for services provided in the group's care facility. The Executive Director also indicated to our investigator that in view of the financial restraints imposed upon the Ministry of Health, it would be unlikely that the Ministry would consider expanding its coverage in the near future.

Our investigator also contacted the Administrative Assistant, Nursing Home Inspection Service, with regard to costs at provincial nursing homes, compared with those at the treatment and care facility involved in this complaint. The figures obtained indicated that in relation to other nursing homes, the costs at the latter were unreasonably high.

Following further legal research, a member of the Ombudsman's legal staff formed the opinion that it might be legally possible for this particular health care facility to receive reimbursement from OHIP, even though it was not technically designated as a hospital in the Schedules to the Regulation of The Health Insurance Act. The opinion held that because the definition of "hospital" in the Regulation was not keyed in with either The Public Hospitals Act or The Private Hospitals Act, the care facility could be designated as a hospital under The Health Insurance Act only. However, even then an amendment to section 40 of the Regulation under The Health Insurance Act would be required in order to entitle the in-patients using the facility to insured services, since their admittance had not been by "a legally qualified medical practitioner."

Since, during the course of the investigation, the Ombudsman determined that it might be open to him to conclude that by refusing reimbursement by OHIP to members of this religious group, the Ministry of Health was acting in an "unreasonable, unjust or improperly discriminatory" manner, he accorded to the Ministry of Health the opportunity to make representations respecting the possible adverse report.

In his reply, the Deputy Minister of Health advised the Ombudsman that he was of the opinion that there was a great distinction between conventional medical care and treatment such as the type offered at this particular facility, which consists entirely of prayer. The care involved no medical supervision or regulation whatsoever, and to require that it be given, would deprive the patients of their right of religious freedom. The Deputy Minister also questioned whether this care facility could be designated as an Extended Health Care Facility under section 41 of the Regu-

lation under The Health Insurance Act, as "under this Regulation, the provision of 'extended care services' necessitates 'skilled nursing and personal care given by or under the supervision of a registered nurse or registered nursing assistant under the direction of a physician.'" Therefore, the Deputy Minister concluded that he did not feel that this facility could qualify for reimbursement under OHIP.

The Ombudsman, having carefully considered the representations made by the Deputy Minister, concluded that, as the facility in question did not offer any medical care, it was not unreasonable for the Ministry to decide that it should not be covered by a medical insurance plan.

Hence, the Ombudsman found this complaint to be not supported.

DETAILED SUMMARY NO. 23

This complaint against the Ministry of Health resulted from the complainant's inability to secure a position as Medical Officer of Health in an Ontario town.

The complainant, a medical doctor who had completed his medical studies in another country, came to Canada in 1968. It was not until his arrival in Canada that he learned of the requirement to write qualifying exams, having been advised that this was not necessary prior to leaving his homeland. The complainant passed the required exam and then obtained a position with a psychiatric hospital in Ontario which was operated by the Ministry of Health. After several years at that facility, the complainant decided to take an internship and residency to gain further experience. He did this from 1973 to 1976 at the Faculty of Medicine at an Ontario university, following which he began to search for a permanent position.

The complainant advised us that in 1977 he heard of several openings for a position of Medical Officer of Health and, to ensure that he was qualified for such a position, he enrolled in a Diploma course in Public Health at another university in Ontario. In November, 1977, the complainant submitted an application for a position as a Medical Officer of Health with a Board of Health. However, he was informed in early 1978 that he had not been selected for the position because he did not have a full licence. As the Ministry did not consider the complainant fully qualified, he was advised to seek a position as an Associate Medical Officer of Health prior to becoming a Medical Officer of Health.

The complainant further advised us that although the successful applicant had a full licence, he did not have the Diploma of Public Health when he was hired. The complainant felt this to be most unfair as he considered himself better qualified and that the only reason he was not fully licensed was because of misleading guarantees by the Ministry of Health upon his arrival in Canada.

Having received the Ministry's statement in response to the notification of our intention to investigate the investigator reviewed the Ministry's file with the Director of the Community Health Protection Branch and the Director of Area Medical Officers. It was also determined that physicians employed as Medical Officers of Health are required to hold a general licence to practise medicine as well as a Diploma in Public Health or its equivalent. The requirements for a medical licence are contained in Section 18(1) of Ontario Regulation 577/75, passed pursuant to The Health Disciplines Act, 1974. This is administered by a licensing body, the College of Physicians and Surgeons. The regulation requiring that a Medical Officer of Health be fully licensed came into effect in 1975. It was then amended in 1977 although the substance was not altered. Therefore, the requirement was in effect before the complainant began his Diploma in Public Health in September, 1977. It was unfortunate that the complainant was not aware of this requirement at the time. The only exception to the requirement is for physicians who, prior to 1975, were Medical Officers of Health under a special registration or licence issued by the College of Physicians and Surgeons of Ontario. Those practising under such a special licence were allowed to continue under a 'grandfather clause', following passage of the regulation in 1975. Thus, the information regarding licensing which was given to the complainant upon his arrival in 1968 by the Ministry of Health was correct at the time, although the legislation was later changed.

A special licence is still available for physicians employed by the Crown, but this does not apply to physicians employed by a Board of Health, as a Board is an autonomous local body and its employees are not employees of the Crown.

The other requirement is that a Medical Officer of Health hold a Diploma of Public Health or its equivalent. However, some of the Boards of Health have in the past, hired fully licensed physicians as Acting Medical Officers of Health. The Board then signs an agreement with the physician for a guaranteed return-of-service upon successful completion of the course. The Board of Health provides financial support while the physician is enrolled in the course, in return for the guaranteed service. The Board of Health of the Health Unit involved in this complaint had

made such an agreement with the physician hired as Medical Officer of Health; however, he was hired only as Acting Medical Officer of Health until he completed the required course.

A review of the notes taken by the Director of Area Medical Officers during his interview with the complainant indicated that the Director had noted that the complainant was not a fully licensed physician and had advised him so at the time. Although the complainant disputed having been advised of this, the Director had made special mention of this in his notes after the interview. He further noted that it was unfortunate that the complainant had not understood this requirement before commencing his Diploma of Public Health program. The Director also informed the investigator that he had advised the complainant to obtain his full licence, so that he could qualify for the position of Medical Officer of Health at a later date.

The Ministry of Health was only involved in the hiring process to the extent that it advised the Board of Health of the qualifications required for the position. The Ministry had reminded the Board that candidates must have a general licence to practise medicine, or be eligible under a grandfather clause. Thus, the Ministry had to advise the Board that the complainant was not eligible for the position of Medical Officer of Health.

Thus, having considered the results of the investigation conducted by his Office, the Ombudsman was unable to describe the actions of the Ministry of Health as having been "unreasonable, unjust, oppressive or improperly discriminatory." He concluded that the Ministry had acted entirely according to the legislation and, although sympathetic to the complainant's difficulties in obtaining employment, the Ombudsman found his complaint to be not supported.

MINISTRY OF

NATURAL RESOURCES

DETAILED SUMMARY NO. 24

The complainant, on his own behalf and that of several of his neighbours, complained to the Ombudsman by letter in May, 1977, alleging the improper issue of a gravel pit licence by the Ministry of Natural Resources, dated February 15, 1976, to another neighbour living directly across the road from the complainant's home. The locale may be described as rural. The complainant contended that as a result of the issue of the licence and the subsequent full-scale operation of a producing gravel pit with the attendant noise, dust and increased traffic, he and his neighbours suffered great personal discomfort, loss of enjoyable use of and damage to their residential properties.

The complainant contended that the Ministry had failed to give notice of the application for the licence to the complainant and the other neighbours who would be directly affected by the issue of it, in order to enable them to register their objections and request a hearing before the Ontario Municipal Board.

The Ministry responded that the licence was issued in full compliance with the requirements of The Pits and Quarries Control Act, 1971. As it had been furnished with statutory declarations to the effect that the applicant was the owner of an operating pit at the time of the application and such information had been verified by a field inspection, it was not necessary to give the complainant notice of the application and afford him a right to a hearing. The Ministry also contended that a berm had been constructed to provide a visual and physical screen of the excavation area and that the entrance and exit route had been relocated to reduce the dust and noise disturbance.

The determination of the validity of the complaint depended upon the interpretation of "pit" as set out in section 1(f) and the applicability of sections 5 and 20(1) and (3) of the Act. These sections read as follows:

1. (f) "pit" means a place where unconsolidated gravel, stone, sand, earth, clay, fill, mineral or other material is being or has been removed by means of an open excavation to supply material for construction, industrial or manufacturing purposes, but does not include a wayside pit;

5. (1) Upon receipt of an application, the Minister shall fix a day as the last day upon which written objections may be filed with him by the municipal

council or any other authority having an interest or any person directly affected by the issuing of a licence.

(3) If any person entitled to object under subsection 1 requires a hearing by notice in writing to the Minister before the expiration of the period for objection, the Minister shall refer the matter to the Board for a hearing.

(4) The Minister may refer an application to the Board for a hearing on his own motion.

20. (1) This Act does not apply to operators of pits and quarries operating in a part of Ontario immediately before it is designated under section 2 until six months after the designation.

(3) Section 5 does not apply to applications for licences in respect of pits and quarries referred to in subsection 1.

If the applicant for a licence could establish that he was the operator of a "pit" as defined in section 1(f), then section 20 (1) and (3) would be applicable and the Ministry would not be obliged to fix a time for objections to the application and the complainant would not be entitled to a hearing by the Ontario Municipal Board.

A thorough investigation was carried out by the investigation staff of the Ombudsman, which included interviews with the complainant and his neighbours, the applicant, and Ministry personnel. As a result of the conflicting evidence, the Ombudsman ordered that a hearing be held pursuant to Section 20 of The Ombudsman Act, 1975 for the purpose of taking the evidence of certain witnesses under oath. Such hearing was held, presided over by Mr. T.P. O'Connor, Q.C., then Deputy Legal Officer in the Office of the Ombudsman. Mr. M.S. Smith, Director of the Legal Services Branch, appeared for the Ministry of Natural Resources, and Mr. Brian P. Goodman, then Director of Investigations, appeared for the Office of the Ombudsman.

The report of the hearing officer found there was no substantial disagreement on the facts. It was not denied that the complainant and his neighbours suffered considerable discomfort and loss of enjoyable use of their residential properties as a result of the Ministry issuing to their neighbour a licence to operate a gravel pit on his property

and the consequent operation of such pit. The evidence of the complainant and the applicant relating to the operations of the pit prior to the issuance of the licence was substantially similar. It was admitted that no sand or gravel was removed from the property and sold. Only small extractions were used for the applicant's own purposes to repair and construct farm buildings, fences and driveways on his own property. At no time did the applicant conduct what could be considered an industrial manufacturing or construction operation on a commercial basis.

However, by reason of the interpretation given by the Divisional Court to the definition of "pit" under section 1(f) of the Act, such use as the complainant did make of the pit prior to obtaining the licence was sufficient to constitute him as an operator of a pit within the meaning of section 20(1) of the Act. The Act itself does not define what is an operating pit. In the case of The Corporation of the Township of Goulbourn and The Ministry of Natural Resources and Elizabeth Kelly, heard in the Divisional Court on January 19, 1978, Southey, J. stated after quoting section 1(f) as follows:

> "It is apparent that such definition [of 'pit' contained in section 1(f)] does not require that operations in a pit be on a large scale nor does it require that production from the pit be sold, although one would expect that would ordinarily be the case. However, production from a pit on one's own land of material for construction, industrial or manufacturing purposes would be sufficient to satisfy the definition of 'pit' under the statute. The statute contains no definition of 'operating' ...."

On the evidence adduced, including the advice received from the Regional Municipality as to the applicant's non-conforming use of the property as a pit, the Ombudsman was unable to find that the Ministry had acted unfairly in the issuance of the licence. Discussions with Ministry officials revealed that steps were being taken to amend The Pits and Quarries Control Act and it was therefore suggested, as a result of our investigation, that consideration be given to the following:

(a) an amendment to section 1(f) of the Act so that a pit, the operation of which was as restricted as that of the Peart pit before August 15, 1973, would not qualify as an "operating pit;"

(b) an amendment to section 20(1) to provide a time limit during which an operator must apply for a licence following the designation period;

(c) repeal of section 20(3).

The Ministry recently informed the Ombudsman's office that it planned to present to the Legislature during the Fall session amending legislation covering the entire subject of pits and quarries. The proposed legislation would effect extensive changes in the present Act and would include amendments that would satisfy our concerns relating to the present sections 1(f), 20(1), and 20(3).

MINISTRY OF

REVENUE

DETAILED SUMMARY NO. 25

The complainant originally contacted our Office in November, 1977. In October, 1975 she and her husband at the time (they have since divorced) purchased a new motor vehicle from a dealership. The purchase took place during the tenure of the New Automobile Buyers' Rebate Program administered by the Ministry of Revenue. Application was made under this program for a refund of the retail sales tax payable on the purchase price of the vehicle. The application was approved and the rebate issued.

In 1977, it came to the attention of the Ministry of Revenue that the rebate had been issued in error: one of the conditions for eligibility for the rebate had not been met. According to the regulation which established the program, motor vehicles had to be registered with the Ministry of Transportation and Communications on or before December 31, 1975 in order to entitle their purchasers to the rebate. The vehicle in this case had not been registered with the Ministry of Transportation and Communications until February, 1976. At length, a notice of assessment was issued to the complainant demanding that she repay the amount she had received. An interest penalty of 9%, accruing from the date the rebate was issued, was added to the assessment.

The complaint to the Ombudsman was that the Ministry of Revenue had acted improperly in assessing the complainant in order to recover a rebate which had been issued in error. It was alleged that the dealership had undertaken to make arrangements for the registration of the vehicle and that any efforts at recovery of the rebate should be directed against the dealer. It was also alleged that an interest penalty of 9% was unfair, in view of the fact that the complainant had had no reason until the notice of assessment was issued to believe that money was owing to the Ministry.

In response to our 19(1) letter, the Deputy Minister of Revenue defended the actions of the Ministry in most respects. He argued that the rebate had been issued because the information on the application form had been taken as true at face value; it was after the information was checked that it proved to be incorrect. The Deputy Minister pointed out that the Ministry has the right to recover rebates issued in error under section 15 a (1) of The Retail Sales Tax Act. He added that the Ministry has no authority under that Act to assess the dealer for recovery of the money, and that the complainant should raise with her dealer any questions of wrongdoing she might have about the delay in registration.

The Deputy Minister did acknowledge, however, that the

interest penalty had been added in error to the amount requested on the notice of assessment. He undertook to issue a revised assessment to the complainant rescinding this interest penalty and imposing interest only as of the due date named on the assessment notice itself. Subsequent correspondence between our Office and the Deputy Minister resulted in the application of this policy retroactively to a few other cases in which interest had been allowed to accrue from the date on which the rebate was paid.

Investigation of this complaint was complicated by the fact that, while our complainant was listed as the purchaser of the vehicle both on the application for the rebate and on the dealer sales agreement form, her husband had been the one to sign the rebate application form and the car had in the end been registered with MTC in her husband's name. Interviews with the complainant's former husband established that he was aware at the time the rebate application form was filled out that the top part of the form requested information about the date on which the vehicle was registered with MTC, and that the information given on the form was not strictly speaking correct. He accounted for having signed the form anyway by reference to an assurance he had received from the dealer that arrangements for its registration would be completed within the next few days. Because the purchase took place in October, 1975, more than two months before the expiry of the program, he believed his wife's eligibility for the rebate would not be jeopardized by a delay in registration of a few days.

Perhaps in recognition of the anomalies involved in who the purchaser of the vehicle was, the Ministry of Revenue took steps in the spring of 1978 to collect the amount of the rebate (which the complainant had not yet paid) from our complainant's former husband.

The circumstances under which the transfer of registration was delayed for over four months remain unclear. Our investigation was complicated by the fact that all the people at the dealership who had been involved in the transaction had left in the three years intervening. The entire dealership was under the management of a new man who had not been present at all at the time of the original transaction. His records of the matter were not helpful.

Our investigation also entertained the possibility that the Ministry of Revenue ought to have confirmed the correctness of the information given on the rebate application form before it issued rebates to applicants. In a letter responding to this suggestion the Deputy Minister of Revenue pointed out that any such procedure would have added significantly to the length of time it would have taken to process the

rebates for eligible applicants. Had the Ministry chosen to confirm with the Ministry of Transportation and Communications each registration date listed on an application form, the rebates of the vast majority of applicants, those who were eligible, would have been delayed unnecessarily. The Ministry perferred the post-audit procedure it in fact adopted.

In the end the Ombudsman decided that the complaint could not be supported, because the Ministry of Revenue had acted properly and within the law on the basis of the confines of the program and the information it had received on the rebate application form. It was suggested to the Ministry informally, though, that this and similar problems arising from the New Automobile Buyers' Rebate Program could have been avoided had applicants been expected to submit photo-copies of their motor vehicle registration certificates with their completed application forms. This would have made it possible for Ministry personnel to verify on the spot the correctness of the information supplied on the form and the eligibility of the applicant for the rebate. In a letter accompanying the report of his investigation, the Ombudsman advised the complainant of other agencies which might be able to assist if she found it appropriate to pursue a complaint against the dealership.

After receiving the report of the Ombudsman's investi-gation, the Deputy Minister of Revenue wrote expressing thanks for the suggestion about additional documentation, and undertaking to keep it in mind in the development of any similar programs which might be administered by the Ministry of Revenue in the future.

DETAILED SUMMARY NO. 26

A school teacher complained to us that the Ministry of Revenue had unfairly requested her to repay a grant of $1,250.00.

In the fall of 1975, the complainant purchased a mobile home which she placed on freehold land in Ontario, the land being a portion of her family's farm on which she herself grew up. The complainant, after applying for a grant under The Ontario Home Buyers Grant Act, 1975, received the initial grant of $1,000.00, as well as the second instalment of $250.00. However, she did not receive the third instalment and, in fact, faced proceedings by the Ministry for recovery of the $1,250.00 which had been paid to her.

The complainant contended that the Ministry was unfair in demanding the return of the grant on the basis that the mobile home in question was not her principal residence.

She took the position that although she did maintain a city apartment in which she resided from Monday through Thursday when school was in session, the mobile home on the freehold land was definitely her principal residence. She further indicated that, although she had attempted to obtain a teaching position near her principal residence, she had been unsuccessful and accordingly had kept her job in the city where she had the apartment.

Having advised the Ministry of our intention to investigate this complaint, and having reviewed the statement of its position on the matter, the investigator examined the contents of the Ministry's file with the Legislation & Case Review Specialist of the Ministry of Revenue. The investigator also spoke with the complainant on several occasions and obtained further details and pertinent information regarding her complaint.

Subsequently, we requested that the Ministry review this matter in light of another case with a similar fact situation wherein the Ministry had decided in favour of the grant applicant. Shortly thereafter, the Ministry advised our office that the complainant was indeed eligible for the grants already received, as well as for the second supplementary grant of $250.00.

We were subsequently advised by the complainant that the Ministry had forwarded to her the application for the second supplemental grant and she also expressed her gratitude for our assistance in resolving her complaint.

DETAILED SUMMARY NO. 27

This complaint against the Ministry of Revenue arose from the Ministry's request that the complainant's husband repay the $1,500.00 Ontario Home Buyers Grant because the complainant had owned a housing unit in another country prior to April 8, 1975, the commencement date of the Ontario Home Buyers Grant program.

However, the complainant contended that after the death of her father in 1943, the housing unit in question had remained in his name. The complainant moved into her father's home in 1949 without the consent of the government of that country and, as a result, was fined and threatened with forcible removal because the house was to have been used for other purposes. She lived in that housing unit until approximately 1955, at which time the courts decided that the property in question had to be sold because the complainant was to be married and intended to leave the country shortly thereafter.

The proceeds from the sale of the house were shared between the complainant and her uncle. The complainant advised that she had been granted a share of the proceeds because she had been taking "care of taxes and upkeep" but had, at no time, held the deed to her father's property. Hence, it was her position that, never having owned property in that country, the house in respect of which her husband had applied for the Ontario Home Buyers Grant, was her first home.

Our investigator noted that in February 1978, the Manager of Operations, Guaranteed Income and Tax Credit Branch, wrote to the complainant stating that the Ministry was prepared to defer further action until the complainant had an opportunity to pursue the matter with the appropriate authorities in the foreign country. However, when the Ministry concluded its review of the circumstances in October 1978, its position remained unaltered.

Subsequently, when our investigator discussed the matter with the complainant, she stated, among other things, that she had lived in the housing unit in question from approximately 1949 to 1955/56, and had learned recently that the house had been in her name, as it had been awarded to her by the courts in 1950. The complainant had been receiving rent from the families that occupied the home. She had been paying the taxes and shared the proceeds from the sale of the unit with her uncle because of a moral obligation. She pointed out that she had lived in her uncle's residence for a number of years prior to moving into the housing unit in question. The complainant had been under no obligation to share any monies with her uncle, as he had not had any interest in the property.

Our investigator also noted that, according to a letter of March 6, 1978, from the authorities of the country in question, the complainant had become the beneficiary of the property on November 25, 1950. It was the complainant who subsequently sold the property, a fact also documented by a local notary.

After a thorough review of this complaint and a careful examination of all the available evidence, the Ombudsman advised the complainant that in his opinion her husband was not entitled to the grant because she had owned a principal residence in another country prior to April 8, 1975. Consequently, the complainant's husband did not comply with section 2(2)(a) of The Ontario Home Buyers Grant Act, 1975.

Also, a review of the Ontario Legislative Debates of the Act to Provide for the Payment of Grants to First-time Home Buyers indicated that the intention of the Legislature

was to exclude the words, "in Ontario" from section 2(2) of the Act, as the inclusion of these words would have indicated that persons who had owned houses outside of Ontario could still qualify for the program. It was the Ombudsman's view, that by excluding the words "in Ontario" from section 2(2), the Legislature created a fair situation in which immigrants, Ontarians and other Canadians would be treated alike.

Further, the legislation in question was not extra-territorial in scope, jurisdiction or operation. The Ombudsman determined that disclosure of previous ownership was to establish entitlement to the grant only. He also noted that in applying for the grant, it was mandatory that an applicant complete and sign the official Ontario Home Buyers Grant application. In doing so, the applicant certified that:

> "Neither I nor my spouse nor any co-owner or the spouse of any co-owner of the Housing Unit has previously been an owner of a Housing Unit anywhere, either jointly with another person or otherwise, that was used by any of us as a Principal Residence."

In the Ombudsman's view, the meaning of the word "anywhere" is clear and unambiguous, and does not require the inclusion of the phrase "in the world." The use of this word should not have caused confusion in the public's mind. Also, the Ombudsman found no evidence to indicate that this interpretation had not been consistently applied throughout the program.

Since the word "anywhere" is not considered to be ambiguous, the Ombudsman found that the Ministry of Revenue would have had no reason to question the accuracy of the certification statement at the time the application was submitted for eligibility review. Hence, it would only be upon audit that the disclosure of previous ownership would have come to light. However, the Ombudsman found no evidence to suggest that the complainant's failure to disclose her previous ownership had been deliberate.

While the Ombudsman sympathized with the complainant's situation, he could not fault the officials of the Ministry of Revenue for their actions in requesting that the grant monies be returned. Although he found the complaint not supported, he nevertheless asked the Ministry of Revenue to consider a fair and reasonable repayment schedule for the complainant, should the Ministry continue its attempt to recover the monies paid.

MINISTRY OF

THE SOLICITOR GENERAL

DETAILED SUMMARY NO. 28

This was a complaint against the Chief Coroner of the Ministry of the Solicitor-General for failing to pay the charges involved in flying a deceased person's body from his residence to a Regional Coroner's Office.

The complainant contended that when she had visited her father's home, she had found him in bed, apparently dead. He was 93 years of age and had been suffering from a heart ailment. The community had no doctor and although the local Public Health nurse came to see the complainant's father, she was not authorized to sign a death certificate, as only doctors can do so. A nearby Regional Coroner agreed to help out by examining the body and issuing a death certificate but the body had to be flown to the Coroner's location. The costs involved were passed back to the deceased's daughter who felt that since the Coroner had ordered the body to be sent to him, he should pay the costs. After the Chief Coroner's office refused to pay the costs, she took her complaint to the Solicitor-General who refused to authorize the Chief Coroner to make the payment.

The Ministry of the Solicitor General was notified of our intention to investigate this complaint and we subsequently received its statement with respect to the complaint.

Our investigator learned that the complainant had tried to obtain financial assistance from OHIP for a least partial payment of the flight services for her deceased father but she had been turned down on the grounds that Air Ambulance Services are only for the living.

Our investigator then contacted the Ambulance Services Branch of the Ministry of Health and discussed the case with the Director. As a result, the Director decided that the situation was indeed exceptional and therefore agreed to instruct OHIP to pay for the portion of the flight from the deceased's residence to the Coroner's location.

As the complainant was satisfied with this arrangement, the investigator advised her of the procedure involved in obtaining the repayment from OHIP.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 29

A young man complained to the Ombudsman that the Ministry of Transportation and Communications had refused to remove the suspension of his driver's licence from his driving record.

The complainant advised that after being involved in an accident, he was requested by the Ministry of Transportation and Communications to file medical evidence concerning his competence to drive safely. In order to comply with this request, the complainant's doctor was required to submit a completed Driver's Medical Examination Report by a deadline of April 8th, 1977, or the complainant's licence would be suspended. The complainant further advised that because his doctors could not conduct the necessary tests and complete the medical report by the deadline, he had telephoned and visited the Driver Licensing and Control Office of the Ministry prior to the deadline to request a time extension. However, the complainant indicated that on both occasions, his request had been denied and, as a result, his licence had been suspended on April 13th, 1977. The Ministry subsequently reinstated his driving privilege after reviewing the medical report but they refused to remove the suspension from his driving record.

In reply to our notice of intention to investigate this complaint, the Ministry advised that although it was their policy to grant requests for extensions on any reasonable grounds, they had no record of the complainant's request for an extension of time in which to file the medical report.

Our investigator met with the Manager of the Driver Licensing and Control Office who did not recall meeting or conversing with the complainant.

The absence of documentary evidence proving a request for a time extension by the complainant necessitated a hearing under oath as provided by The Ombudsman Act. Both the complainant and the Manager gave evidence under oath at the hearing.

The evidence of both men put forward at the hearing led the Ombudsman to conclude that, on the basis of probabilities, the complainant had visited the Ministry and unsuccessfully requested an extension for filing his medical report. In view of this, the Ombudsman considered the Ministry's refusal to extend the deadline and the subsequent suspension of the complainant's licence to be "unreasonable." Pursuant to section 19(3) of The Ombudsman Act, the Ombudsman advised the Ministry of his possible conclusion and recommendation and invited the Ministry to address itself to these and make additional comments if it so wished. The pertinent parts of that letter read as follows:

"Possible Conclusions

Both [the Manager] and [the complainant] were sincerely honest and credible witnesses. There is no question that [the Manager] is a person who is both capable and fair in the administration of [his] duties. It would appear that it might be open to me to conclude, however, that there is sufficient evidence to support [the complainant's] contentions. Both [the Manager] and [the complainant] in giving ...testimony suffered to some degree from a lapse of memory. Although [the complainant's] recollection of the relevant events was vague in spots, the detail which he did relate and his honest and relaxed appearance under questioning indicates that his story was not contrived in any way. [The complainant] is an intelligent young man whose actions, as he related them, were highly reasonable under the circumstances. On the balance of the evidence, therefore, it is open to me to conclude that [the complainant] met with [the Manager] on April 7, 1977, at [the latter's] office, and unsuccessfully requested an extension for filing his medical report. The refusal to grant an extension where reasonable grounds to do so existed, appears to fall within the terms of section 22(1)(b) of The Ombudsman Act, 1975, which provides as follows:

22(1) - This section applies in every case where, after making an investigation under the Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission which was the subject matter of the investigation,

(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory.

Possible Recommendations

It would appear that it might be open to me to recommend, pursuant to section 22(3)(c) and section 22(3)(g) of The Ombudsman Act, 1975 that the record of [the complainant's] driver's

licence suspension for failure to file a medical report be removed."

Following careful consideration of the Ministry's reply, and based on the investigation conducted by his own office, the Ombudsman recommended in his final report, pursuant to section 22(3)(c) and (g) of The Ombudsman Act, 1975, that the Ministry of Transportation and Communications should remove the record of licence suspension from the complainant's record.

The Deputy Minister replied to the Ombudsman's recommendation that he did not agree that the actions of the Ministry were inappropriate. However, on the basis that some doubt did exist, the Ministry was prepared to weigh that doubt in the complainant's favour and therefore agreed to remove the suspension from his driving record. The Deputy Minister concluded that the removal of the suspension was done "without prejudice to the Ministry and without in any way acknowledging error or wrongdoing on the part of the Ministry."

DETAILED SUMMARY NO. 30

This complaint concerning the Ministry of Transportation and Communications originated by means of a personal interview during one of the Ombudsman's private hearings in November of 1977.

The complainants, a married couple, own a motel in an Ontario town. Adjacent to their property is a long-unused road allowance. At a meeting held on November 14, 1977, the Local Roads Board voted to open that particular road allowance in order to provide access to a trailer at the western end of the road allowance. The Board also voted to request that the complainants move their septic field from beneath the road allowance where it has been situated for some time.

The complainants contended that the Ministry of Transportation and Communications had acted improperly in approving these resolutions, as it would cost the complainants an estimated $25,000 to remove their septic field from beneath the road allowance and to install new facilities which would meet the strict standards now enforced by the Ministry of Health.

Furthermore, the complainants pointed out that there were two other roads already in use providing access to the trailer which itself was rarely occupied.

The complainants had already incurred considerable expense in 1970 when they improved the quality of their sewage system. At that time it would not have been difficult for them to relocate their sewage field, but there had been no indication then that this would ever be necessary. The complainants contended that the Ministry of Transportation and Communications should bear responsibility for not having advised them in 1970 of the possibility that the road allowance may be cleared for use as a road. In view of the consequences to them should the road be opened and the questionable benefit to any occupants of the trailer, the complainants believed that the Ministry should withdraw its approval for the project.

By letter dated February 14, 1978, the Ombudsman advised the Deputy Minister of Transportation and Communications of his receipt of this complaint and invited the Ministry to indicate its view of the matter.

The Ministry's response confirmed that the local Roads Board had indeed voted on November 14, 1977, to extend the road allowance in question in order to provide access to the trailer at its west end and that the complainants were given until September 1, 1979 to complete the removal of their tile bed from the road allowance. As a result of the complainants' representations to local Ministry officials, the Ministry looked into the situation and satisfied itself that the road allowance was an established one and did fall within the jurisdiction of the Local Roads Board. The Ministry agreed, however, that it would undertake no work in the vicinity of the complainants' tile bed until it was satisfied that there was no alternative to its relocation.

The Ministry stated that it did not consider itself to have the authority to deny the Board's expressed intention to proceed with the construction of the road, but that as a result of the Ombudsman's letter, it would have one of its representatives meet again with the Trustees of the Board in an effort to settle this dispute to everyone's satisfaction.

In order to give the Ministry sufficient time to complete its efforts at conciliation in this matter, our Office decided to suspend its investigation of this complaint until the results of these efforts became clear. We asked the complainants and the Ministry to keep us advised of the outcome of their negotiations. The complainants were also advised that if these new initiatives by the Ministry did not produce a satisfactory result, we would be prepared to resume our investigation of the complaint.

In a letter dated April 19, 1978, the complainants appealed to our Office to reopen our investigation into this matter. On June 5, 1978, we also received documents from

the law firm representing the complainants and learned that the complainants had served Writs of Summons on the Trustees of the Local Roads Board with a view to obtaining an injunction to stop any work on the road because of the alleged procedural violations of section 16 of The Local Roads Board Act.

Our Legal Officer decided that there was sufficient difference between the grounds on which application had been made to the Courts and the grounds on which the complainants had complained to our Office to permit an investigation by the Ombudsman.

Our investigator attended at the complainants' property in order to take photographs of the area in question and also to discuss the matter with the complainants. He also met with the local officials of the Ministry of Transportation and Communications and made photocopies of documents in their file relating to this complaint. Upon his return, our investigator forwarded the file to our Legal Directorate for further research. It was ascertained that the only matter our Office would be able to investigate was whether or not the Ministry of Transportation and Communications acted reasonably in the annual Roads Board meeting. Hence, the complainants were contacted and advised that we would hold their file in abeyance pending the outcome of the Local Roads Board's meeting. At his request, the investigator subsequently received letters from both the complainants and the Ministry advising him of the outcome of the Local Roads Board meeting.

As a result of further inquiries made by a Ministry of Transportation and Communications official, it was learned that the local Health Unit had agreed to make an exception in this case and allow the septic field to remain within five feet of the actual road, rather than insist on the present setback requirements of ten feet from the property line. However, the local Health Board stipulated that a sturdy fence would have to be erected to protect this septic field from errant vehicles. To this end, the Ministry of Transportation and Communications offical advised our investigator that the Ministry would install metal poles with reflectors. As well, the Ministry promised to ensure that the snow would be ploughed away from the septic field, to the south, in order to avoid freezing of the field.

It was also learned that, as a result of the aforementioned, the Local Roads Board had agreed to install a substandard one-lane road within the road allowance in question in order to avoid the necessity of relocating the complainants' septic field. Of course, the septic field would have to be relocated at the expiration of its normal life span in order to meet the necessary setback requirements.

In regard to the lane allowances running across the complainants' property, the Local Roads Board and the Ministry of Transportation and Communications concurred that they had no objection to the Ministry of Natural Resources transferring said lane allowances to the property owners.

This information was relayed to the complainants during a telephone conversation on October 31, 1978. Subsequently, on November 3, 1978, our Office received a letter from the complainants reiterating the information relayed to them by telephone and thanking the Ombudsman for having brought about an amicable solution to their complaint.

DETAILED SUMMARY NO. 31

This complaint concerns damage to the complainant's well allegedly caused by construction work carried out by the Ministry of Transportation and Communications.

A private construction firm had been employed by the Ministry of Transportation and Communications to carry out the necessary reconstruction of an Ontario highway in the vicinity of the complainant's property. The complainant alleged that his well and house had been damaged. The problems regarding the damage to the property and the well were brought to the attention of the Ministry. The Ministry brought the claim to the attention of the contractor who denied liability.

In its response to our notice of intention to investigate this complaint, the Ministry indicated that the contractor who had conducted the reconstruction of the highway was responsible for any damage sustained to the complainant's well. The contractor arranged for an investigation and concluded that since the well had previously been in poor condition, the construction did not cause the alleged damage.

Our investigator attended at the Ministry offices to review the contents of their file with the Head of Insurance and Claims, requesting photocopies of pertinent documents where necessary. She also obtained a copy of the report relating to the investigation conducted by a well driller on behalf of the construction company.

The file was researched by our Legal Directorate to assess the nature and extent of the Ministry's responsibility with respect to any damage to the complainant's well. It was concluded that the contractor was an agent of the Ministry and that there would be legal liability on the Ministry if the alleged damage was proven to have been caused by the reconstruction.

During a subsequent on-site inspection of the property by our investigator, it became apparent that the complainant was complaining only about the damage to his well and not about damage to his home. He was complaining specifically that his well had caved in due to the vibrations emitted from the vibratory compaction equipment. Thus, to assess the effects of the vibratory equipment, it became necessary for the Ombudsman to consult a specialist in structural and geotechnical engineering. We engaged the services of a firm of consulting Geotechnical, Inspection and Testing Engineers to assess the likely effects of vibratory compaction equipment and general reconstruction of the highway on the complainant's well.

Following a detailed study of the alleged damage from a structural viewpoint, the consultant concluded that based on the distance of the vibratory machinery from the well, the level of vibration emitted would not likely have caused any structural damage. It was further concluded that this particular well box was incorrectly built and it was felt that the damage would not have occurred if the well had been properly constructed. The consultant attributed the condition of the well to "normal building usage, improper and faulty construction procedures and local normal environments."

The Ministry, in an effort to resolve this claim, had offered to pay the complainant $500.00 for the purpose of cleaning out his well, but the complainant had refused this settlement offer. In the absence of substantial evidence in support of this complaint, the Ombudsman concluded that the offer was not unreasonable on the part of the Ministry. The complaint, therefore, was found to be not supported.

DETAILED SUMMARY NO. 32

This complaint against the Ministry of Transportation and Communications arose from the Ministry's refusal to reimburse the complainant for the cost of an unused vehicle registration sticker.

In 1978, the complainant purchased a registration sticker for his licence plate in order to drive an old van. When he discovered that the van was inoperable, he returned the registration sticker and requested a refund of $60.00. According to the complainant, he was refused a refund at the first MTC office which he approached. However, when he visited another MTC office, he was instructed to forward the unused sticker together with a copy of his vehicle permit in order to obtain a refund. When the complainant furnished the MTC office with a copy of his vehicle permit and the

unused sticker, these were returned to him with an explanation that the refund period had expired. The complainant then wrote to our Office alleging that he had not been allowed a fair opportunity to provide the Ministry with the proper documentation in order to receive the refund.

Our investigator contacted the Manager of the Licence Registration Office at Queen's Park and learned that full refunds may be obtained on unused licence plates and vehicle permits which are returned within 30 days. Unused plates and vehicle permits may be returned within 60 days but only half the fee paid is refunded. Unused stickers with the vehicle permits may be returned within 60 days in order to obtain a refund of half the fee paid.

By letter, we advised the complainant of the information we had obtained and requested him to advise us of the dates on which he had purchased and returned the registration sticker. However, instead of replying to our letter, the complainant forwarded a copy of it to the Manager of the Licence Registration Office at Queen's Park. The complainant subsequently received a reply from the Ministry stating that although the 60-day period had expired, the Ministry was prepared to make an exception and reimburse him the appropriate sum since he had been misinformed by Ministry personnel. The Ministry also forwarded to our investigator a copy of its letter to the complainant. When our investigator attempted to contact the complainant by telephone, he was informed by the complainant's wife that her husband was very satisfied with the Ministry's response. She also expressed their gratitude to the Ombudsman.

MINISTRY OF

TREASURY ECONOMICS & INTERGOVERNMENTAL AFFAIRS

DETAILED SUMMARY NO. 33

An owner of a craft shop telephoned our Office to register a complaint against the Ministry of Treasury, Economics and Intergovernment Affairs. She complained that as a result of the Ministry's failure to supply her with the appropriate application form, she had been unable to obtain financial assistance under the Ontario Youth Employment Program.

The complainant contended that in May of 1978, she had requested an application from a Ministry employee who had informed her that she would qualify for the assistance. She further stated that she had subsequently contacted the Ministry three weeks after her initial request since she had not received the application and had been informed that the application had been mailed to her one week earlier. The complainant alleged that she had again contacted the Ministry two days prior to the deadline of June 26th, 1978, but had been informed that it was too late for the Ministry to send her an application.

The complainant then wrote to the Ministry to complain about the chain of events because she had already hired a student in the belief that she would receive assistance from the Program for the student's wages.

She subsequently received a reply advising that the Ministry had in fact sent two applications to her, one in May and one in June, and that it was unfortunate she had not received either. She was also informed that due to budgetary restraints, the Ministry would not be in a position to consider an application at that time.

In accordance with The Ombudsman Act, 1975, the Deputy Ministry of Treasury, Economics and Intergovernmental Affairs was advised of the Ombudsman's intention to investigate this complaint.

The Assistant Deputy Minister responded to our letter by advising that an application had been mailed to the complainant on June 10, 1978, with a letter advising that the application had to be filed by June 26, 1978. It was also pointed out that the complainant had hired a student prior to application approval which was contrary to the directives of the Program. The Assistant Deputy Minister stated that their records indicated that the complainant had not contacted the Ministry two days prior to June 26, but on June 30, four days after the Program's deadline. His letter indicated, however, that under the circumstances, she would be allowed to complete an application for consideration by the Ministry.

Our investigator subsequently learned that a Ministry official had contacted the complainant to arrange a convenient time for the complainant and her student to attend the Ministry's office to complete the application for the 1978 Program.

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 34

The complainant sustained an injury to his ribs as a result of an accidental blow to his chest during the course of his employment in August of 1975. The accident was reported to the Workmen's Compensation Board and Temporary Total Disability Benefits were paid to the complainant for a contusion to the ribs.

The original diagnosis, made by the claimant's family doctor, was a rib contusion. The complainant was treated conservatively. X-rays revealed no abnormalities of the right lower ribs.

In January, 1976 the complainant was referred to a specialist for assessment. At that time the complainant complained that his pain had become generalized in character, radiating to both sides of the back. X-rays revealed a moderate amount of osteoporosis. The specialist reported that the complainant had recovered from his original injury and was suffering from muscle weakness and stiffness for which a programme of exercises, to enable his return to work was recommended.

The complainant was admitted to the Workmen's Compensation Board's Hospital and Rehabilitation Centre in March, 1976 for treatment consisting of physiotherapy and the administration of analgesics. Upon his discharge from the Centre in April, 1976, the complainant was attempted to do so, but was unable to complete his shift because of pain which he was experiencing.

The complainant's Temporary Total Disability Benefits, which he had been granted since the date of the accident for the rib contusion, were terminated in April, 1976 based on the Board's position that he had recovered from his original industrial accident. In June, 1976 the complainant was examined by an orthopaedic surgeon who concluded that he probably had sustained a partial displacement of the lower ribs on the right side of the costal transverse junction. The orthopaedic surgeon was of the opinion that the complainant was not able to return to work. The doctor subsequently reviewed the complainant and felt that the back contusion was not so severe and that his discomfort should recede so that he could return to work in the near future.

The complainant's symptoms persisted and he was seen in July, 1976 by a psychiatrist who diagnosed him as suffering from a chronic anxiety neurosis with a reactive depression. The complainant was reviewed by the psychiatrist in February, 1977 and the psychiatrist reported that the complainant's condition had not changed since his initial psychiatric assessment.

A Board doctor examined the complainant in August, 1976 and concluded that the complainant, who appeared physiologically older than his chronological age, had come to the end of his working days. The Board doctor was of the opinion that no lasting damage had been created by the industrial accident and that the complainant should not be entitled to a psychological award.

The complainant appealed the issue of the termination of his Temporary Total Disability Benefits to the Appeal Board in June, 1977. The appeal was denied based on the opinion of the Board's Surgical Consultant that the complainant's accident did not result in lasting damage and that he had long since recovered from it.

In July, 1977 an Injured Workers' Association wrote to us on the complainant's behalf to register a complaint against the Workmen's Compensation Board. It was the complainant's contention that as a result of his industrial accident of August, 1975 he is entitled to Temporary Total Disability Benefits beyond April, 1976. The complainant was then contacted and he gave his authorization to the Ombudsman's Office to investigate his complaint.

Pursuant to Section 19(1) of The Ombudsman Act, 1975, we notified the Chairman of the Workmen's Compensation Board by letter dated September 19, 1977 of our intention to investigate this complaint.

Upon receipt of a photocopy of the Board's file in relation to this complaint, the history of the complainant's claim with the Workmen's Compensation Board was thoroughly reviewed.

A careful study of the medical evidence contained in the Board's file indicated that one of the attending orthopaedic surgeons stated in August, 1976 that on that date, the complainant was still not able to return to work because of continuing back pain. It was also noted that the Board's consultant in psychiatry had advanced the opinion that the complainant's compensable accident may have aggravated a pre-existing psychological condition.

Accordingly, a letter was sent to the Chairman of the Workmen's Compensation Board in June, 1978, pursuant to Section 19(3) of The Ombudsman Act. This letter stated the following:

"Possible Conclusions

1. It is possible for me to conclude that the Appeal Board's decision not to extend [the complainant's] temporary total benefits beyond April 15, 1976 was unreasonable. In particular, I note that the Appeal Board appears to have failed to take into

consideration a medical report dated August 5, 1976 from [his orthopaedic surgeon], which states that on that date he was still not able to return to work because of continuing back pain.

2. It is possible for me to conclude that the Appeal Board's decision not to grant [the complainant] an award for psychological disability was unreasonable. In particular, I note that the Appeal Board appears to have failed to take into consideration the opinion of [the Board's consultant psychiatrist] that [the complainant's] compensable accident may have aggravated a pre-existing psychological condition.

Possible Recommendations

That the Appeal Board revoke its decision of June 23, 1977 and,

1. extend [the complainant's] entitlement to temporary total benefits until August 11, 1976, the date on which the Board received [his orthopaedic surgeon's] final report.

2. Review [the complainant's] entitlement to an award for psychological disability."

The Chairman of the Workmen's Compensation Board made representations by letter dated July 31, 1978. In that letter the Chairman wrote the following:

> "The attached decision of the Appeal Board dated July 11th, 1978 constitutes the response of the Appeal Board panel and of the Board to your Section 19(3) letter of June 16, 1978.
>
> As you will note, the decision rejects the possible recommendation of the Ombudsman for the payment of temporary total benefits and accepts the recommendation to an award for psychological disability."

The Appeal Board Decision stated that:

> "The Appeal Board has considered the possible conclusions and recommendations of the Ombudsman and concludes that the medical information indicates that [the complainant] had recovered from the disability diagnosed as contusion, soft tissue, right posterior chest wall by April fifteenth, 1976, and that his disability after that date has been diagnosed as an aggravation of a chronic anxiety state.

> Having given full consideration to the medical information including the opinion of the Consultant Psychiatrist, the Appeal Board concludes that [the complainant's] entitlement for the aggravation of his chronic anxiety state, as a result of his compensable accident of August eight, 1975, is ten per cent which shall be awarded for a period of thirty months from April fifteenth, 1976, to be paid in a lump sum."

After giving full consideration to the representations and comments of the Board respecting the issue of the extension of Temporary Total Disability Benefits, we reached the conclusion, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the Board's refusal to extend the complainant's Temporary Total Disability Benefits beyond April, 1976 was "unreasonable". Accordingly, we recommended, pursuant to Section 22(3) of The Ombudsman Act, 1975, that the decision of the Workmen's Compensation Board be revoked and that Temporary Total Disability Benefits be made payable to the complainant until August 11, 1976, the date on which the Board received the complainant's orthopaedic surgeon's final report. This recommendation was forwarded to the Workmen's Compensation Board and a copy sent to the Minister of Labour on October 6, 1978. The Chairman responded by letter dated November 6, 1978 and stated:

> "[The complainant] was examined on August 10, 1976 by a Surgical Consultant of the Board who reported as follows:
>
> > 'The incident of contusion to the right posterior chest, now nearly one year ago, appears to have been quite minor and in my opinion it is quite certain no lasting damage has been done. He has long since fully recovered.'
>
> The Appeal Board panel and the Board conclude that the preponderance of medical opinion supports the decision of the Appeal Board that [the complainant's] disability after April 15th, 1976 has been properly diagnosed as 'anxiety state' which has been adequately recognized by the award granted for that disability."

The Ombudsman decided against sending a copy of his report to the Premier, although he would have been entitled to do so under Section 22(4) of The Ombudsman Act, because he determined that the Board's position was not entirely groundless. The Board was of the opinion that the complainant had recovered from the physical injury sustained by April 5, 1976. Although there is evidence to support the Board's opinion, it was the Ombudsman's conclusion that the opinion of the treating orthopaedic specialist in August of 1976 must be given serious consideration.

DETAILED SUMMARY NO. 35

The complainant in this case was involved in a motor vehicle accident during the course of his employment on November 27, 1974. At the time of his injury, the complainant was employed with a sporting goods store. Following the injury, the complainant returned to work until December 20, 1974 at which time he was forced to lay off due to severe neck problems and continuing headaches. A medical examination conducted at the time of the complainant's layoff established that he suffered from a whiplash injury. Following this examination, a claim was submitted to the Workmen's Compensation Board and the complainant was awarded Temporary Total Benefits retroactive to the date of his layoff from work.

In March of 1975, the complainant requested admission to the Compensation Board's Rehabilitation Centre in Downsview. Before granting this request, the Board had the complainant examined by an orthopaedic surgeon. The surgeon examined the complainant on April 17, 1975 and concluded that there were no indications of any organic disability present. The surgeon added that in his opinion, the complainant's continuing pains were psychogenic in nature and attributable to a number of personal problems. In light of the surgeon's report, the Workmen's Compensation Board requested that the complainant be examined by a psychiatrist. A psychiatric evaluation dated June 26, 1975 concluded that the complainant's personal difficulties were playing a major role in his disability. Although there was no evidence that any psychiatrist had ever examined the complainant prior to his compensable injury, this particular psychiatrist concluded that the patient was in a state of anxiety prior to the occurrence of his compensable injury. Psychiatric entitlement was considered by the Board and denied. Although psychiatric entitlement was denied, the complainant continued to receive Temporary Total Benefits on an organic basis.

The complainant attempted to return to work in December of 1975 as a labourer. Due to continuing neck pains, the complainant was forced to lay off approximately five weeks later. Although the medical reports contained in the complainant's file did not explain the exact source of his ongoing disability, the doctors involved continued to prescribe treatment and the Board continued to pay the claimant Temporary Total Benefits during the periods he was not employed.

On June 11, 1976 the complainant was examined at the Board's request by a second orthopaedic surgeon. This surgeon's report stated that the complainant should attempt to return to work. On July 5, 1976, the Board terminated the complainant's benefits and finalized his claim. In September of 1976, the complainant once again attempted to return to work. Following twelve days of employment, the complainant resigned due to continuing neck problems. Further

medical investigation could not account for the complainant's continuing neck problems. However, the physicians continued to prescribe medication and light physiotherapy. In November of 1976, the complainant obtained employment with a transit company. The complainant remained with this employer until the summer of 1978. During his employment with this company, the complainant was under the care of a chiropractor who reported that following conservative treatment, the complainant's neck problems were gradually subsiding.

The complainant appealed the Board's decision to finalize his claim and an Appeal Board Decision dated June 7, 1977 ruled that further entitlement would not be awarded in this claim. After receiving this adverse decision, the claimant forwarded his complaint to the Ombudsman's attention.

On October 14, 1977, the Chairman of the Workmen's Compensation Board was notified in accordance with the requirements of The Ombudsman Act, 1975, and advised of our intention to investigate this complaint. Investigation of this complaint consisted of a thorough review of the complainant's Workmen's Compensation file and personal interviews with the complainant to obtain further information.

The investigation of this complaint revealed that although the medical reports submitted to the Workmen's Compensation Board did not explain the exact source of the complainant's continuing neck problems, neither did they cast doubt on the fact that the complainant was, in fact, experiencing such problems and that they required treatment. In addition, it was noted that a number of chiropractic reports submitted by the complainant to the Board in February of 1977 stated that he suffered from a definite organic disability in the neck area and responded favourably to a short-term treatment programme. Following a careful review of the Board's file, the Ombudsman formed the tentative conclusion that the complainant was temporarily, partially disabled as a result of his compensable injury during the time period July, 1976 to November, 1976 and should have been compensated accordingly.

Pursuant to Section 19(3) of The Ombudsman Act, 1975, the Workmen's Compensation Board was informed by letter, dated June 5, 1978 that, based on our investigation thus far, it appeared that there were sufficient grounds for the making of a report or recommendation which might adversely affect the Board. During our investigation, this Office was informed that the employer in this case would not be adversely affected by the implementation of the Ombudsman's possible recommendation. The Workmen's Compensation Board was invited to make representations respecting the possible adverse report or recommendation and it was suggested that such representations should relate to the following possible conclusion and possible recommendation:

"Possible Conclusions

1. It would appear open to me to conclude that the Appeal Board's decision to deny (the complainant) Temporary Total Disability Benefits for the period July 5, 1976 to November 8, 1976 less time worked was unreasonable.

Possible Recommendation

It would appear that it might be open to me to recommend, pursuant to Section 22(3)(g) that the Workmen's Compensation Board should revoke its Appeal Board Decision of June 7, 1977 and order that (the complainant) be paid Temporary Total Disability Benefits for the period July 5, 1976 to November 8, 1976 less time worked, pursuant to Section 41(a) of The Workmen's Compensation Act."

In a letter dated June 30, 1978 the Chairman responded to our letter of June 5, 1978. The Chairman's response stated that, based on the available medical evidence, the Appeal Board Panel had concluded that the complainant had no entitlement to compensation benefits under The Workmen's Compensation Act from July 5, 1976 to November 8, 1976.

After receiving the Board's response, this case was given further consideration by the Ombudsman. As a result of this action, the Ombudsman determined that the appropriate action for the Workmen's Compensation Board would have been to implement the possible recommendation outlined in his letter of June 5, 1978. Consequently, a report pursuant to Section 22 of The Ombudsman Act, 1975, was submitted to the Chairman of the Workmen's Compensation Board with a copy to the Minister of Labour. In this Report, the Ombudsman recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Workmen's Compensation Board should revoke its decision of June 7, 1977 and order that the complainant be paid Temporary Total Benefits from July 5, 1976 to September 15, 1976 and from September 28, 1976 to November 8, 1976. This Report was dated October 6, 1978.

On November 14, 1978, our Office received a response from the Chairman which stated that the Board did not plan on taking any steps to implement the recommendation outlined in the Ombudsman's Report. The Chairman pointed out that to be eligible for benefits under Section 41 of The Workmen's Compensation Act, the workman must show a degree of temporary partial disability remaining as a result of the compensable injury. The Chairman listed a number of medical documents which, in the Board's opinion, cast doubt regarding any residual disability the complainant was experiencing which could be related to the compensable injury. After receiving the Chairman's response, this matter was given further consideration by the Ombudsman. As a result of this action, it was decided that a copy of the Ombudsman's Report would

not be forwarded to the Premier in accordance with Section 22(4) of The Ombudsman Act, 1975. In reaching this decision, careful consideration was given to the letter from the Workmen's Compensation Board of November 14, 1978. The Ombudsman concluded that the Board's position was not entirely groundless, although the Ombudsman's interpretation of the evidence differed from that of the Board. The Board interpreted the available medical evidence to indicate that the complainant had no residual degree of disability whatsoever. The Ombudsman, however, concluded that the fact that the complainant continued to receive medication and treatment indicated that he continued to be disabled to some extent.

On December 27, 1978, a copy of the Ombudsman's final Report was forwarded to the complainant. In this letter, the complainant was informed that his case would be included in the Ombudsman's next Report to the Legislature. This case was then closed.

DETAILED SUMMARY NO. 36

The complainant sustained a back injury while operating an air pressure drill during the course of his employment in March, 1956. The accident was reported to the Workmen's Compensation Board and partial disability benefits were paid to the complainant until April, 1956.

The original diagnosis, made by the complainant's company doctor, was a sprained muscle of the left lumbar region. The complainant laid off work for six weeks. He returned to work after that time, but laid off again in February, 1957 when pain in the lower back became too severe for him to continue working. Since that time, the complainant has performed various light jobs.

In 1958 the complainant was examined by an orthopaedic surgeon who found that as a result of the accident, the complainant's back had become unstable at the lumbosacral level, leading to degeneration of the intervertebral disc at that level. The orthopaedic surgeon anticipated that the complainant's condition would be slowly progressive. The orthopaedic surgeon noted that the complainant had not had complaints relating to his lower back prior to the accident. The complainant claimed further disability and following a Board Hearing in July, 1958, further disability was allowed on the basis of aggravation of a pre-existing degenerative disc disease from February, 1957 to May, 1957.

An examination by another orthopaedic surgeon in 1963 revealed that the complainant was suffering from mild degenerative disc disease. The doctor found that since the accident, the complainant had developed a progressive narrowing of the 4-5 disc space with apophyseal arthritis at that level.

Another orthopaedic examination took place in June, 1975. The doctor observed spasm of the lumbar paravertebral musculature and that the complainant complained of tenderness from pressure to the left of the lumbosacral level of his spine. X-rays revealed the presence of marked degenerative change at the L5-S1 intervertebral disc level with narrowing of the disc space, sclerosis of the adjacent bone margins and osteophyte formation. The doctor concluded that the complainant was suffering from lumbosacral disc disease and that although there may be chronic nerve root entrapment, the deficit on neurological examination was probably long-standing. The doctor recommended that the complainant be fitted for a brace and that he not accept heavy work.

A Hearing before the Appeal Board of the Workmen's Compensation Board took place in March, 1977. The complainant requested the Board to reconsider its decision of July, 1958, which had resulted in his being granted entitlement to benefits on the basis of aggravation of pre-existing degenerative disc disease for the period February-May, 1957. Recent medical reports were submitted to the Board, supporting the complainant's contention that he had a residual disability as a result of the industrial accident of March, 1956. The Application to Reconsider the decision of the Board was denied on the basis that the recent medical reports were supportive of deterioration of a pre-existing condition, but not supportive of disability related to the compensable aggravation.

In July, 1977, the complainant wrote to us to register a complaint against the Workmen's Compensation Board. It was his contention that his continuing back disability was related to his industrial accident of March, 1956, and that, therefore, he was entitled to further disability benefits.

Pursuant to Section 19(1) of The Ombudsman Act, 1975, we notified the Chairman of the Workmen's Compensation Board by letter dated August 12, 1977 of our intention to investigate this complaint.

Upon receipt of the photocopy of the Board's file in relation to this complaint, the history of the complainant's claim with the Workmen's Compensation Board was thoroughly reviewed.

A careful study of the medical evidence contained in the Board's file indicated that one of the attending orthopaedic surgeons reported in 1958 that as a result of his accident, the complainant's lower back had become unstable at the lumbosacral

level, leading to the degeneration of the intervertebral disc at that level. It was also noted that another orthopaedic surgeon reported in September, 1963 that the complainant's injury had probably accelerated and aggravated any lesion which may have been present before the injury and that the original injury appeared to have resulted in a prolapsed intervertebral disc at the L5-S1 level as a result of which a marked degenerative condition with apophyseal arthritis was produced.

Accordingly, letters were sent to the Chairman of the Workmen's Compensation Board, setting forth the following "Possible Conclusions":

"POSSIBLE CONCLUSIONS

(1) "It is possible for me to conclude that the Appeal Board acted unreasonably in rejecting [the complainant's] contention that his continuing back disability is related to his accident of March 13, 1956. It is my opinion that this contention may be supported by the following:

(i) "A medical report from [the complainant's] treating orthopaedic surgeon in 1958 which stated that as a result of his accident, [the complainant's] lower back had become unstable at the lumbosacral level, leading to the degeneration of the intervertebral disc at that level. The surgeon also expressed the view that [the complainant] was not physically able to engage in heavy work.

(ii) "A medical report from another orthopaedic surgeon dated September 30, 1963 which stated that [the complaintant's] injury probably accelerated and aggravated any lesion which may have been present before the injury and that the original injury would appear to have resulted in a prolapsed intervertebral disc at the L-5 S-1 level as a result of which a marked degenerative condition with apophyseal arthritis was produced.

(2) "It is open to me to conclude that although medical opinion confirms that [the complainant] is suffering from degenerative disc disease, the fact that the degenerative process was permanently aggravated by his accident does not appear to have been taken into consideration by the Board."

We included the following "Possible Recommendation":

"POSSIBLE RECOMMENDATION

It is possible for me to recommend that the Appeal Board should revoke its decision of July 11, 1977 and should recognize [the complainant's] claim for a permanent disability award retroactive to the date on which the accident occurred."

The Chairman of the Workman's Compensation Board made representations by letter dated June 30, 1978. In that letter, the Chairman advised us as follows:

> "The Appeal Board panel has considered all the available information and notes that [the complainant's] claim for compensation benefits in 1956 and 1957 was allowed on the basis of an aggravation of a degenerative process in his spine which had anti-dated (sic) his original accident.
>
> "The medical report from the orthopaedic surgeon in 1958 referred to in your letter included X-ray findings of March 13, 1956, the day of the accident indicative of the degenerative process and that information was reinforced when the specialist gave evidence before the Board in a hearing on July 3, 1958.
>
> "The Appeal Board panel and the Board are satisfied that there is no significant medical information that would demonstrate that the compensable accident of March 13, 1956 accelerated or significantly aggravated the development of [the complainant's] degenerative disc disease.
>
> "The Appeal Board panel and the Board consequently can see no reason to alter the decision in this matter."

The complainant's former employer advised us by letter dated June 22, 1978 that they did not wish to comment on the Ombudsman's possible conclusions and possible recommendation.

After giving full consideration to the representations and comments of the Board respecting our recommendation that the Appeal Board revoke its decision of July, 1977 and recognize the complainant's claim for a Permanent Disability Award retroactive to the date on which the accident occurred, we reached the conclusion, pursuant to Section 22 of The Ombudsman Act, 1975, that the Board's refusal to grant a Permanent Disability Award to the complainant was "unreasonable." Accordingly, we recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that the decision of the Workmen's Compensation Board be revoked and that the complainant be awarded a Permanent Partial Disability Award retroactive to the date on which the accident occurred in recognition of his ongoing back disability. This recommendation was forwarded to the Workmen's Compensation Board and a copy sent to the Minister of Labour on September 28, 1978. The Chairman responded by letter dated October 25, 1978 that, having considered the report and recommendation of the Ombudsman, the

Appeal Board Panel and the Board did not propose to take any steps to give effect to our recommendation as the Board's position on the matter remained as set forth in its response to our letter pursuant to Section 19(3) of The Ombudsman Act, 1975. Accordingly, on December 20, 1978, a copy of our report and recommendation was forwarded to the Premier, pursuant to Sections 22(4) and 22(5) of The Ombudsman Act, 1975.

DETAILED SUMMARY NO. 37

In 1958, the complainant, while working, was inspecting an elevated truck tire when it fell, knocking him to the ground. The original diagnosis was a bruise to the right sacroiliac with tenderness and swelling of the bone. Full compensation benefits were paid for approximately five days when the complainant returned to work. Back and leg pain persisted however, and in April, 1960, a herniated disc in the lower spine was diagnosed. A Harris back brace was prescribed and with the assistance of the brace, the complainant was able to remain at work in spite of his back and leg pain. The worker has worn a brace off and on since 1959 and the Board has, throughout, underwritten the cost of supplying and repairing various braces. This arrangement continued. The Board did not however award the employee a pension for his back injury.

In 1969, while employed as a working manager, the employee was lifting a tire up on an air lift when the tire overbalanced and fell, striking him on the head. Entitlement for the resulting neck injury was granted on an aggravation basis and in September, 1970 a cervical fusion was required. After many assessments by the Pensions Medical Branch, the injured employee was awarded a 17% Permanent Disability Award for his 1969 accident, 15% for the neck disability and 2% for a shoulder disability which was found to be related to this accident.

The injured employee was dissatisfied with the level of his pension and pursued his claim for increased benefits to the Appeal Board. The Appeal Board, after hearing all of the evidence, ruled that there was no evidence to show a greater disability than that recognized by the 17% Permanent Partial Disability Award.

The employee approached his M.P.P. with his complaint against the Workmen's Compensation Board, who brought it to the Ombudsman's attention in January, 1977. The investigation could not, however, be commenced until the Appeal Board had disposed of a request by the M.P.P. for reconsideration of its decision dated December 30, 1976. The Appeal Board denied this request in a decision dated May 4, 1977.

As it was clear that the employee had exhausted all avenues of appeal the complaint was within the jurisdiction of the Ombudsman to investigate. Accordingly, Mr. Michael Starr, Chairman of the Workmen's Compensation Board, was advised in accordance with The Ombudsman Act, 1975, of the Ombudsman's intention to investigate the complaint by letter dated February 4, 1977, in which the employee's contention was summarized as follows:

> "He contends that his present permanent disability awards do not adequately compensate him for the residual disability caused by his compensable accidents on October 9, 1958, and July 25, 1969."

After the request for reconsideration had been denied, the Board supplied this Office with complete copies of its files on these claims. The complaint was investigated by members of our investigative staff who both reviewed the Board's files and obtained additional information from the complainant and his doctors.

In respect to the worker's claim for increased permanent disability awards for his neck and shoulder disabilities, the Ombudsman formed the opinion early on in the investigation that the Appeal Board's decision in this connection could not be described as "unreasonable, unjust, oppressive or improperly discriminatory." The ratings assigned to the neck and shoulder disabilities were in keeping with the rating schedule authorized by Section 42(3) of The Workmen's Compensation Act and the available medical evidence.

However, with regard to the employee's claim for a retroactive Permanent Disability Award for his 1958 back injury, the Ombudsman formed the view that it had failed to fully consider this claim. The Ombudsman noted that the worker's representative had clearly indicated to the Appeal Board that she was requesting such an award on the worker's behalf and that the employee advised the Appeal Board that he has been wearing a Harris back brace since 1959 to relieve pain in his leg and back. However, the Ombudsman noted that there was no specific finding on this issue in the Appeal Board's decision. The Ombudsman also noted that the Appeal Board decision appeared to ignore two facts which he regarded as significant:

(1) that since 1959, the Workmen's Compensation Board has underwritten the cost of supplying and repairing the employee's numerous Harris braces;

(2) that there is medical evidence on file indicating that the employee's 1958 injury developed into a herniated 4th disc.

The Ombudsman reported this possible conclusion along with the possible recommendation that the Appeal Board reconsider this part of their decision to Mr. Starr in a letter written pursuant to Section 19(3) of The Ombudsman Act, 1975 and dated January 6, 1978.

Mr. Starr responded to the Ombudsman's letter of January 6, 1978, by letter dated February 8, 1978. The Ombudsman carefully considered the representations made by the Board therein and came to the conclusion that they did not persuade him that the Appeal Board's decision of December 30, 1976, was not, in part, unreasonable. The Ombudsman was of the opinion that none of the medical reports cited by Mr. Starr was inconsistent with the original prognosis given by the complainant's orthopaedic surgeon in his report dated April 28, 1960; this doctor stated therein:

> "I would feel this man should be listed as not entirely out of the woods, that the impression he has a herniated disc is more or less clinically reinforced now and that we recognize that he may in the future return to greater or less flare-ups of his trouble but that these should respond fairly well to conservative therapy."

The various medical reports since 1960 indicate that the employee, through the use of a Harris back brace, managed to keep his back disability under control, but, in the Ombudsman's opinion, these reports did not indicate that the injured worker had no lower back disability whatsoever. Yet the Ombudsman noted that the Board had underwritten the cost of supplying and repairing numerous Harris braces. The Ombudsman further noted that the Board has, since July, 1976, paid the employee under Section 51(3)(b) of The Workmen's Compensation Act for the damage caused to his cltohing by the wearing of a Harris back brace. Section 51(3)(b) makes it clear that this clothing allowance is only available to injured workers whose clothing is "damaged by reason of the wearing of a lower limb prosthesis or a back brace for a permanent back disability or a permanent leg brace."

After completing his investigation the Ombudsman reported the following conclusion and recommendation to the Board on October 6, 1978.

"In short, I am of the opinion that the Board's position in this matter is too illogical and internally inconsistent to be considered reasonable and that the Appeal Board's decision of December 20, 1976, can therefore, be described as "unreasonable" within the meaning of Section 22(1)(b) of The Ombudsman Act.

I therefore recommend pursuant to Section 22(3)(g) of The Ombudsman Act that the Appeal Board revoke its decision of December 30, 1976, and grant [the complainant] a permanent partial disability pension for the disability caused by his October, 1958, back injury."

The Workmen's Compensation Board responded by letter dated October 26, 1978. Its response read in part:

> "It is the opinion of the Appeal Board panel that the medical reports subsequent to [the complainant's orthopaedic surgeon] of April 28th, 1960, do not demonstrate that [the complainant] had any significant low back disability. This opinion is supported by the reports of (June 3rd, 1970), when he stated 'Up until this time he continues to experience the occasional twinge of lumbosacral distress but he can live around it and it has not been much of a disability to him at the present time', and of [orthopaedic surgeon] (January 9th, 1973), 'Some years ago he had a low back injury treated by [the complainant's orthopaedic surgeon] with a Harris brace. He wore it three years. His back has been alright since', and by the successive findings at pension review under claim [#] on February 4, 1976 and June 4, 1976 that there was no significant low back disability.
>
> Finally, [neuro-psychiatrist] having examined the complainant on November 4th, 1976 reported to the Board that the complainant 'described low back pain; this is 'not bad with the brace' but he 'has to be careful' and he always wears the brace or takes it with him.' Relative to the complainant's low back, [the neuro-psychiatrist] stated 'back movements are full and there is no neurologic abnormality.'
>
> The Board has under particular circumstances supplied and maintained the repair of a back brace for an injured employee with no assessable partial disability to help maintain him at work and minimize the danger of further aggravations. The Appeal Board panel notes that the clothing allowance under Section 51(3)(b) was granted under claim [#] where a pension was awarded for cervical problems, and the grant of clothing allowance would appear to have been an administrative error.
>
> The Appeal Board panel is satisfied that the preponderance of medical opinion does not support the proposition that [the complainant] has a permanent low back disability which would warrant any permanent partial disability award.

> The Appeal Board panel, having considered the recommendation of the Ombudsman, does not accept that its decision of December 30th, 1976 was illogical and internally inconsistent.
>
> The Appeal Board panel and the Board sees no reason to revoke that decision and grant [the complainant] a permanent partial disability pension for back disability related to his accident of October 1958."

After considering the Board's response the Temporary Ombudsman determined that the Board's response was not adequate or appropriate. Accordingly, copies of the Ombudsman's Report and Recommendation and the Board's response were sent to the Premier on December 19, 1978. The Premier acknowledged receipt of the Ombudsman's Recommendation. The complainant was advised of the results of our investigation and the file was closed.

DETAILED SUMMARY NO. 38

The complainant was involved in a motor vehicle accident while in the course of his employment in December, 1969. At the moment of impact, the gas tank exploded just behind the seat which the worker occupied, although the gas did not catch fire. The worker was knocked unconscious for a brief period of time. He was attended by his family physician that day and his injuries were diagnosed as a sprain to the lumbar and cervical spine, contusion to the lower ribs and sprain to the left shoulder girdle. The complainant was 57 years old at the time.

The Workmen's Compensation Board allowed the claim and paid Temporary Total Benefits from the date of accident until January 27, 1971, at which time his benefits were reduced by 50% to June 4, 1971. The worker was examined for a pensions rating on June 4, 1971; however, because the Pensions Medical Officer was of the opinion that there were only limited indications of a remaining physical disability the complainant was not considered to be entitled to a Permanent Disability Pension.

The complainant was of the opinion that he continued to be disabled as a result of his accident at work beyond June 4, 1971. He, therefore, appealed the termination of his benefits. The Appeal Board determined after the appointment of a medical referee that there was no relationship between the worker's ongoing physical or neurotic conditions and his work accident. The complainant's claim for further benefits beyond June, 1971 was denied.

In June, 1976 the complainant wrote to our Office registering a complaint against the decision of the Appeal Board. As it was clear that the complainant had exhausted the available appeals, Mr. Starr, Chairman of the WCB was

notified of our intention to investigate. The Board provided our Office with a photocopy of the entire file and the complaint was assigned to a member of our investigative staff. Our investigation revealed the following information.

The complainant worked in the construction industry for the same employer for 31 years prior to his accident. He suffered an earlier compensable accident in August, 1943 when he was struck by flying cement while dynamiting a wall; he sustained a laceration to the head with concussion and a compound, comminuted fracture of his left middle finger. He was hospitalized until October, 1943. In December, 1943, he was referred to a psychiatrist, with continued complaints of dizziness, headaches, and fatigue. The psychiatrist felt there was some vasomotor instability, although he suggested that the claimant return to modified employment. The worker's complaint continued for another year-and-a-half, when he was reviewed again by the psychiatrist in March, 1945. The doctor was not impressed with the symptoms and he reported that the examination was negative for physical findings. He questioned the sincerity of the worker's symptoms and felt he had recovered from his accident. In April, 1945, the worker was awarded a 3% lump sum pension for limitation of movement of the left middle finger and residual headaches. In 1956 and 1957, the claimant reported further symptoms of headaches, dizziness, and nausea to another doctor. However, this doctor could find no evidence of intra-cranial pathology. This physician indicated that despite repeated assurance, the worker remained convinced that he still suffered from the effects of his 1943 accident.

Between 1956 and his 1969 accident, the worker had no problems with his health, other than the common minor respiratory infections, et cetera. However, from the date of that accident up to the present, he has consistently complained of left-sided abdominal pain extending into his chest, pain in his back, shoulder and neck, nausea upon physicial exertion, and an inability to work. The man has not returned to work since his accident in 1969.

A review of the medical history subsequent to his accident of December, 1969 indicates that x-rays taken on the day of the accident revealed degenerative changes present in his lumbar spine. There was no evidence of any fracture. The family physician reported that his disc spaces were fairly well preserved, apart from L-5, S-1, which showed some slight narrowing.

The family physician who treated the man since 1948 wrote to the Board in July, 1973. It was the doctor's opinion that the worker has no physical complaints whatsoever other than minor problems such as respiratory infections. He informed the Board that the worker's disa-

bility dated from the time of the accident with persistent neck pain, pain in the left arm, left chest and abdomen. He also noted subjective symptoms of nausea on exertion which have contributed to his inability to work since the accident. It was the physician's opinion that all these problems have produced total disability with regard to work since the accident.

The report of a neuro-psychiatrist who was appointed as a medical referee by the Appeal Board was of the opinion that there was no evidence of any permanent physical disability resulting from the accident at work. This physician was of the opinion that the degenerative changes in the worker's cervical, dorsal and lumbar spine as well as his shoulder and right hip, are related to his age rather than to his accident. From a psychological point of view, the doctor stated that the worker was suffering from a form of post-traumatic neurosis with multiple somatic aches, ready fatigue, dizziness, headaches and inability to work. However, in the physician's opinion, this was not related to any physical or psychological trauma suffered as a result of the accident. He indicated that he felt it was very significant that the worker developed similar symptoms at the time of an earlier accident in 1943, and that a neurological assessment at that time led to a conclusion that he was suffering from a "constitutional weakness."

As part of our investigation, the neuro-psychiatrist was questioned regarding his diagnosis of post-traumatic neurosis. We had some difficulty understanding this diagnosis because the term 'post-traumatic neurosis' seems, by definition, to imply that the complainant's neurosis was related to the trauma of his accident. The doctor explained that the term 'post-traumatic neurosis' was rather misleading in the context of this case. He stated that he had used the term because it was a conventional one describing a reaction after a particular event. However, in this case, he explained, the term refers to a relationship in time rather than to a causal relationship; that is, the claimant exhibited a change in his behaviour from the time of his accident. He stated that in post-traumatic neurosis of the type from which this worker suffers, the accident is not really the specific cause of the neurosis. Usually in these cases, the person is pre-disposed to collapsing into illness and the triggering event is almost irrelevant. There are usually many factors which contribute to this type of collapse such as, dissatisfaction with one's job, dependency needs, or an unhappy homelife. In this case, the worker's neurosis is related to his accident only in terms of timing and not in terms of trauma.

Because the neuro-psychiatrist and the Board's doctors disagreed completely with the worker's own family physician, this office arranged to have the man re-assessed by another psychiatrist. Our consultant placed less emphasis than the medical referee on the concept that the worker had a constitutional instability which caused him to be predisposed to compensation neurosis. In the opinion of our physician the worker's injury was a precipitating and an important factor in the development of his present condition. Our consultant reported that in conjunction with the worker's father-in-law's death (the father-in-law having passed away approximately one month after the accident and the father-in-law having been the employer for the last 31 years), his age, and his frustration over what he saw as society's unwillingness to help him, there was little doubt in his mind that the claimant would not be in his present situation if not for the accident. The doctor did not feel that a similar, non-compensable injury, would have left him with the same problem. It was, unfortunately, difficult to say that the injury was the major factor; it was one of a number, again the loss of his father-in-law being of great importance. This psychiatrist did not think that the worker's personality configuration or constitution predisposed him in a major way to his present problem.

During the course of the investigation, the Ombudsman formed the view that it was open to him to conclude that the Appeal Board's refusal to recognize any relationship between the ongoing post-traumatic neurosis and the industrial accident of December 19, 1969 and its consequent denial of entitlement to a Permanent Disability Pension was unreasonable. In particular, he noted that it had been clearly established from the information on file submitted by the family physician and the medical referee that the manifestation of the disabling symptoms developed immediately following the compensable accident. The Ombudsman noted that the worker's complaints since his 1969 accident, as reported by his treating physicians, have been extremely consistent. The Ombudsman then came to the tentative conclusion that there is a causal relationship between the complainant's compensable accident and his present, primarily psychological, disability.

In a letter dated January 6, 1978, the Ombudsman submitted a possible recommendation to Mr. Starr which stated that he was of the opinion, based on the investigation thus far, that the Appeal Board should reconsider its decision in light of our consultant's recent detailed report, and that this reconsideration should be carried out with a view to granting the worker entitlement to a Permanent Disability Award on the basis that his compensable accident was a significant factor in triggering the immediate and continuing development of his present disability, diagnosed as post-traumatic neurosis. The Ombudsman also made the possible recommendation that any award should be made retroactive to June 4, 1971 when temporary benefits were terminated.

Because, in the Ombudsman's view, the Workmen's Compensation Board and the employer at the time of the accident, might be "adversely affected" by the possible conclusion and recommendation, the Board and the employer were afforded the opportunity to make representations respecting the possible adverse report pursuant to Section 19(3) of The Ombudsman Act. Representations were received on behalf of the Board by letter dated February 7, 1978 and on behalf of the employer, verbally on February 24, 1978. Briefly, the employer stated that the worker had not been dealt with fairly by the Workmen's Compensation Board and that the company had no objections to the implementation of the possible recommendation. Mr. Starr's response, on behalf of the Board, reads as follows:

> "The following constitutes the response of the Appeal Board panel and of the Board to your Section 19(3) letter of January 6th, 1978.
>
> 1. The Board decision being questioned followed the hearing of October 7th, 1971, from which there was an Interim Decision which appointed a Medical Referee under the provisions of Section 22(2) of The Workmen's Compensation Act.
>
> 2. The Medical Referee appointed under the authority of that section concluded that: "I would relate the post-traumatic neurosis to his underlying personality and tendency to overreaction and hypochondriasis rather than to any physical or psychological trauma suffered at the time of the accident. It is significant that similar symptoms were recorded after an earlier accident in 1943, and a neurological consultation also led to a somewhat similar conclusion, namely of 'constitutional' weakness."
>
> 3. Under the provisions of Section 22(2) of the Act, the Medical Referee's certificate is conclusive as to the matters certified unless the Board otherwise directs. The Board did not so direct in this case but accepted the report as conclusive.
>
> 4. Where the Board has accepted the Medical Referee's report as the basis of a decision it has consistently refused to re-consider such decision in the absence of significant new factual information.
>
> 5. The Appeal Board panel has carefully considered your Section 19(3) letter and concludes that (your psychiatrist's) report was based on the same information that was available to the Appeal Board and to the Medical Referee. (This doctor's) report constitutes another opinion on the case without any further significant new factual information.

> In these circumstances, the Appeal Board panel and the Board are not prepared to implement your possible recommendation having regard to the report of the Medical Referee which is conclusive under Section 22(2) of the Act."

Following receipt of the Board's response we carefully reviewed reports of both psychiatrists, and the Medical Referee emphasized the worker's "underlying personality", specifically, his "constitutional weakness" or predisposition to "collapse into illness." This doctor found support for this view in the early psychiatric report of 1943 in which similar symptoms were cited. The psychiatrist retained by our Office, on the other hand, acknowledged the problems the worker had following his 1943 compensable accident but emphasized that, were it not for the injuries sustained in December, 1969, he would not be in his present situation. He supported this view by reference to his own observations of the man from which he concluded that the injured worker had no personality configuration of the sort that would make him any more or less susceptible to post-traumatic neurosis, and by reference to the reports of the family physician, which stressed that the man was a productive member of the labour force without complaint from 1957 to 1969.

Having considered the results of our investigation, including the representations made by the Board, the Ombudsman reached the conclusion that the Appeal Board's refusal to regard the report of our consultant dated September 30, 1977 as sufficient cause to reconsider its decision of December 15, 1971 was unreasonable within the meaning of Section 22(1)(b) of The Ombudsman Act. The Ombudsman stated that Medical Referee's certificate and opinions in this matter have been accepted by the Appeal Board as conclusive pursuant to Section 22(2) of The Workmen's Compensation Act, but he failed to see why the Appeal Board could not exercise its discretion under that section and direct that Medical Referee's certificate and opinions cease to be regarded as conclusive. The Ombudsman was also not persuaded that the absence of what the Board has called "further significant new factual information" is adequate reason for its refusal to so exercise its discretion; it was his opinion that the Board's policy in this connection conflicts with the Board's policy of extending to the injured worker the benefit of doubt at all levels of adjudication. He was of the opinion that if the Appeal Board is to extend the benefit of doubt to the worker it must remain open to new interpretations of the already-available evidence in his case.

Accordingly, a final report was sent to the Board and Minister of Labour dated October 6, 1978 outlining the following recommendation.

> "I have accordingly determined pursuant to Section 22(1)(b) of The Ombudsman Act that the Appeal Board's refusal to reconsider its decision of December 15, 1971 in the light of our consultant's report of September 30, 1977 is unreasonable. It is my recommendation pursuant to Section 22(3)(a) of The Ombudsman Act that the Appeal Board should reconsider its December 15, 1971 decision in the light of [this] report with a view to granting [the worker] entitlement to a Permanent Disability Award for his disability diagnosed as post-traumatic neurosis. Any award should be made retroactive to June 4, 1971 when [the worker's] temporary benefits were terminated."

The Board responded on November 2, 1978 and stated:

> "The Board is satisfied that the application of the principle of benefit of doubt does not extend to new interpretations of the already-available evidence which has been the subject of a Medical Referee's certificate and opinion, on the basis of further medical opinion based on the same evidence available to the Medical Referee, and accepted as conclusive by the Board.
>
> On November 29th, 1971 the Medical Referee certified that, 'I would relate the post-traumatic neurosis to his underlying personality and tendency to overreaction and hypochondriasis rather than to any physical or psychological trauma suffered at the time of the accident.'
>
> The Board directed that the Medical Referee's opinion was conclusive by its decision of December 15th, 1971, and sees no reason to conclude otherwise at this time."

The response was considered and the Ombudsman determined that it was not an appropriate or adequate response to our recommendation. The matter was then referred to the Premier who acknowledged receipt of the report of the Ombudsman and the response of the Board.

The complainant was advised of the results of our investigation and the Board's response to the Ombudsman's recommendation. The file was then closed.

DETAILED SUMMARY NO. 39

The complainant in this case was employed as a mixer in a solvent room with a chemical firm between May of 1968 and March of 1971. At the time of his resignation with this firm, on March 5, 1971 the complainant stated that his health had deteriorated to the point where he was no longer capable of performing his job. The claimant felt that he was suffering from a severe liver dysfunction as a result of his employment in the chemical plant. The medical evidence available at the time of his resignation did not relate the complainant's liver condition to the inhalation of toxic fumes during his employment.

Following his resignation from the chemical plant, the complainant spent the next two years (June, 1971 - March, 1973) attempting to rehabilitate himself. This rehabilitation was in the form of an accounting course at a college, and attempts at selling real estate, a brief term as manager of a variety store, and finally, a clerical position with the government. Due to continuous deterioration of his health, the claimant stated that he was forced to abandon each of the mentioned occupations, and in one instance, only three days after commencing the work.

In February of 1973, the complainant was examined by his family physician. Recognizing the seriousness of the complainant's condition, this physician referred the complainant to a specialist of Internal Medicine. The specialist admitted the complainant to the hospital for a liver biopsy. Based on the liver biopsy, the claimant's condition was diagnosed as active chronic hepatitis with early cirrhosis of the liver. It was at that time that the complainant filed a complaint to the Workmen's Compensation Board. The complainant stated that the delay in filing (approximately two years from terminating his employment with the chemical firm) was a result of ignorance. He was apparently under the impression that the Board dealt only with cases involving specific industrial accidents. The claimant stated that it was, in fact, the specialist's suggestion that a claim be submitted to the Workmen's Compensation Board.

A claim was submitted to the Board in May of 1973. This claim was initially denied and this decision was confirmed by the Review Committee in June of 1973. The complainant appealed this decision and further investigation was carried out by the Board. In November of 1973, an Appeal Tribunal concluded that the claimant's exposure in his employment aggravated a pre-existing liver condition and that he had entitlement to compensation benefits only for the period of such aggravation as determined from appropriate medical reports. It was not however, until March of 1974 that the Board reached a decision regarding the claimant's rate of disability. At that time, the claimant was

awarded 50% Temporary Partial Benefits, retroactive to March 8, 1971. The decision to limit benefits was appealed by the claimant and the Workmen's Compensation Board conducted still further medical investigation into this claim. On December 10, 1974, the Board ruled that the complainant was no longer entitled to benefits for an organic disability but that a psychological disability had developed, as a result of the treatment for the liver dysfunction and therefore a three-year Provisional Pension would be granted to the complainant. This Provisional Pension awarded in a lump sum, was rated at 40% and was granted from September 15, 1975 to September 18, 1978. On June 24, 1976, the final level of appeal at the Workmen's Compensation Board ruled that the benefits the complainant had received thus far adequately compensated him for any residual disability as a result of his employment with the chemical plant. After receiving this adverse decision, the complainant submitted his complaint to our Office.

On July 15, 1976, the Chairman of the Workmen's Compensation Board was notified pursuant to Section 19(1) of The Ombudsman Act, 1975, of our intention to investigate this complaint. The investigation of this complaint involved interviews with the complainant, a number of his former physicians, and senior representatives of the Workmen's Compensation Board. In addition to these interviews, the complainant's file was reviewed in its entirety. The investigation conducted by our Office focused on both the organic and non-organic issues in this claim. The available medical evidence indicated that the claimant's liver dysfunction had been the subject of considerable medical investigation. It appears accurate to state that at the time of his employment with the chemical firm, the claimant suffered from a pre-existing liver condition, specifically, chronic hepatitis combined with early cirrhosis. This fact had not been disputed by the Workmen's Compensation Board. It also appeared accurate to state that the claimant's liver dysfunction was aggravated as a result of his employment with the chemical firm. Having awarded benefits accordingly, the Board did not appear to dispute these facts. The first issue for concern was the extent and duration of the claimant's organic disability.

Our investigation uncovered a report submitted to the Workmen's Compensation Board by the claimant's family physician, dated November 26, 1973 which stated in part "He is still off work and from all recent medical reports on this syndrome, in view of the liver biopsy, the length of history and present state of liver dysfunction, the possibility of recovery is practically non-existent. In my opinion, all this adds up to the fact that (the complainant) is unlikely to be fit for employment in the general sense of the word, in the foreseeable future." On February 27, 1974, a specialist in Internal Medicine reported to the Compensation Board that "(The complainant's) exposure to the industrial chemicals may, in fact, have aggravated the liver disease...I would think that he does have some permanent residual disa-

bility from this infection." In a subsequent report dated August 16, 1974, this same specialist reported to the Board "I do not think this man has severe liver disease; I do not think there is any evidence that he has liver dysfunction-causing symptoms."

The controversy over the complainant's organic liver disability had not, at the time of this writing, been resolved. Our investigation indicated that the complainant is still suffering with organic liver disorder. This information was confirmed with the claimant's present physician. In a letter to our Office, dated February 21, 1977 the claimant's physician stated that "He (the complainant) has been seen by me on several occasions and repeated liver dysfunction tests are grossly abnormal."

The second issue considered in our investigation concerns the degree of the complainant's psychological disability. On June 17, 1975, a psychiatric report was submitted to the Workmen's Compensation Board which evaluated the claimant's psychiatric state. In this report, the psychiatrist stated that the claimant was in a psychological sense, totally disabled as a result of the numerous medical treatments for a liver dysfunction. The doctor added that the complainant had thoroughly convinced himself that he suffers from a severe liver disease. According to the doctor, it was this preoccupation with a liver dysfunction that was disabling the claimant. The doctor suggested to the Board that the complainant receive compensation benefits accordingly. The Board considered the doctor's report and limited awards to a three-year 50% Provisional Pension. The complainant was never personally examined by any other psychiatrist.

Following a careful review of the Board's file, the Ombudsman formed the tentative conclusion that the Workmen's Compensation Board had been unreasonable and that the Appeal Board Decision of June 24, 1976 should be varied.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board and the employer in this case, were informed by letters dated June 6, 1977 that following a preliminary investigation, it appeared that there existed sufficient grounds for making a report or recommendation that may adversely affect both the Board and the employer. Both parties were invited to make representations respecting the possible adverse report or recommendation and it was suggested that such representations should address themselves to the following possible conclusions and possible recommendation:

"Possible Conclusions

1. It is open for me to conclude that (the complainant) was totally disabled as a result of the aggravation of a pre-existing liver condition from March of 1971 to August, 1974. I am of the opinion that this position is supported by reports from Dr. T. dated November 26, 1973. It is my understanding that a workman suffering from an industrial accident, or as in this case an industrial disease, should receive full compensation benefits until such time as either he returns to work or is deemed medically fit for light or modified work. There has been considerable disagreement amongst the consulting doctors in (the complainant's) case. This possible conclusion also stated that "The facts, therefore, appear to be that the complainant suffered from the aggravation of a pre-existing liver condition as a result of his employment with the chemical firm. His consulting physician reported in November of 1973 that he was, at the time and in the foreseeable future, totally disabled as a result of this aggravation. The earliest medical evidence which is contrary to this position is found in Dr. B.'s report of August 16, 1974. The Workmen's Compensation Board has stated that the complainant did in fact suffer a pre-existing liver condition, specifically, hepatitis and possible cirrhosis of the liver. In view of this fact, the Board maintains that its degree of responsibility in this matter should be limited. It was noted however, that in spite of this pre-existing liver condition, the complainant continued to work for a three-year period with the chemical firm. His illness and subsequent resignation appear not to have been the result of the pre-existing liver condition, but rather, the aggravation of this condition due to fume toxicity.

2. It would appear open to me to conclude that the Appeal Board would be fair and just in awarding the complainant Temporary Partial Benefits at a disability rate of 50% for the time period August 16, 1974 to May 1, 1975. Dr. B.'s report of August, 1974 would indicate an improvement in the claimant's liver dysfunction.

3. It is open to me to conclude that the Workmen's Compensation Board should accept total responsibility for the psychiatric disability that the complainant suffers as a result of treatment for his liver dysfunction. The medical evidence on file indicates

that the complainant did, in fact, develop a psychological disability while being treated for a liver dysfunction. The Workmen's Compensation Board requested that the complainant be assessed by Dr. H., a psychiatrist. The complainant was examined on May 1, 1975 and the doctor concluded that the patient was "psychologically disabled and so entitled to disability pension support." This specific report also stated "accurately stating a prognosis, in these circumstances, is a vexing task, but to state my conviction, few patients are able to sustain a burden of total occupational disability, especially as it affects all other areas of their life. Two or three years appears to me to be the common norm, following which there is a spontaneous tendency to return to health and productive employment." This specific report indicated two significant findings, the first being that the complainant, in a psychological sense, was totally disabled, and the second being that this disability resulted from the medical treatment for a liver dysfunction. Based on this psychiatric report, it would seem appropriate to grant the complainant total compensation benefits until such time as he fully recovered from his psychological disability and is medically deemed fit to return to work. The Board's medical consultants have stated their opinion that the relationship between the claimant's present psychological disability and his past organic condition is a "moderate one." The Board's position appears to be that the claimant is not entitled to full benefits since a considerable degree of his psychological disability actually results from problems originating outside his employment and, therefore, is not the Board's responsibility. As I have indicated, the psychiatrist's position was contrary to the Board's and since my investigation indicated that the claimant was only examined by one psychiatrist, it appears unreasonable for the Board to refute his findings for its own.

Possible Recommendation

1. the Appeal Board should vary its decision dated June 24, 1976 and order that the complainant receive Temporary Total Benefits from March 8, 1971 to August 16, 1974 for the aggravation of a pre-existing liver condition. In addition, the Board should order that the complainant receive Temporary Total Benefits retroactive from May 1, 1975 to September 18, 1978 for a psychological disability resulting from treatment of his liver dysfunction."

On July 15, 1977, the Chairman of the Board responded to the Ombudsman's possible recommendation. With respect to the claimant's organic disability, the Chairman of the Board stated that there was only one medical report on file that suggested total disability for the period March 8, 1971 to August 16, 1974. In addition, the Chairman stated that medical evidence existed to state that the claimant was medically fit to return to employment on March 1, 1971.

With respect to the claimant's psychiatric disability, the Chairman of the Board stated that the Board's Consultant Psychiatrist concluded that a moderate relationship existed between the claimant's employment and his psychological disability. The Chairman added "It would appear that Dr. F. (Board Psychiatric Consultant) who had access to all of the materials on file, did not read Dr. H.'s report as indicating that the psychological disability was totally related to the accident." In conclusion, the Chairman stated that the Board saw no reason to depart from the decision of June 24, 1976.

On July 15, 1977, our Office received a reply to the Ombudsman's Section 19(3) letter of June 6, 1977. Briefly, the employer stated that the complainant "has been more than fairly treated by the Workmen's Compensation Board." The employer did not feel that the claimant should be awarded further benefits in this claim.

The complainant's case was reviewed in light of the representations received by the Board and the employer. On July 20, 1977, a member of our staff, discussed the claimant's psychological state with the outside psychiatrist involved in this case. During this conversation, the psychiatrist stated that, in his opinion, the claimant, at the time of his examination, in June of 1975 was in a psychological sense, totally disabled as a result of the numerous medical treatments for liver dysfunction. The psychiatrist added that the complainant had thoroughly convinced himself that he suffered from a severe liver disease.

Based on all the available medical evidence, the Ombudsman concluded that a number of medical inconsistencies existed as to the extent and duration of the complainant's liver dysfunction. Throughout the course of his many long and exhaustive medical examinations, the complainant has received only minimal benefits. It was therefore the Ombudsman's view that the Appeal Board in its decision of June 24, 1976 was unreasonable to deny the complainant full compensation benefits at a time when the exact nature of his liver dysfunction was not medically established. It was also the Ombudsman's conclusion that the Appeal Board Decision of June 24, 1976 was unreasonable in denying the complainant full and continuing compensation benefits for a psychological disability, partially in light of the fact that the psychological condition is, according to the only psychiatrist who ever examined the complainant, wholly related to the compensable disorder.

Accordingly, the report and recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975 was forwarded to the Workmen's Compensation Board on February 8, 1978. This report stated:

> "I accordingly recommend, pursuant to Section 22(3) of The Ombudsman Act that the decision of the Workmen's Compensation Board in this case be varied. I also recommend that pursuant to Section 75 of The Workmen's Compensation Act, that the Board reconsider its decision of June 24, 1976 and grant the complainant a new Hearing to establish his total organic disability, specifying the acute period and any degree of residual disability. It is my recommendation that the Workmen's Compensation Board grant the complainant a 100% Provisional Pension from September 15, 1975 to September 15, 1978 for a psychological disability arising out of the treatment for a compensable liver dysfunction."

A copy of this Report was also forwarded to the former Minister of Labour, Dr. Bette Stephenson.

On March 8, 1978, our Office received a letter from the Workmen's Compensation Board stating that "Further to your Section 22(3) letter of February 8, 1978 the Appeal Board Panel has considered your recommendations in this matter and decided to have the matter referred to an appropriate Medical Referee under the provisions of Section 22 of The Workmen's Compensation Act. Authority will be given to that Referee to seek other specialists' opinions if necessary. Once the Medical Referee's findings have been received and considered by the Appeal Board Panel, he will be further advised in this matter. Our Office received a second letter from the Board dated May 29, 1978 which stated that arrangements were made by the Board, to have the claimant assessed at a hospital. However, the Board informed our Office that the claimant refused further admittance to hospital for liver tests. The Board informed our Office that in light of the claimant's position, the Board would have to base its decision on the most up-to-date available medical evidence. On October 12, 1978 our Office received a third letter from the Workmen's Compensation Board which constituted a full response to the Ombudsman's recommendation pursuant to Section 22 of The Ombudsman Act. This letter stated in part "The Appeal Board Panel, having considered the recommendations, has decided that, for reasons set forth in its response to your Section 19(3) letter on this matter, that the complainant has no greater entitlement for psychological disability than previously awarded". With reference to the claimant's organic disability, the Board reported that "With reference to your recommendation that the Board grant the claimant a new Hearing to establish his total organic disability, the Appeal Board Panel directed that he be examined by Dr. M. for

an opinion on this matter. A copy of Dr. M.'s report of May 30, 1978 is also attached for your information. In this report, Dr. M. stated that "I feel very strongly that the claimant should be properly assessed in order to determine the activity of his chronic hepatitis", and indicated he would be happy to arrange the claimant's admission to hospital for a complete assessment at any time. Despite the earnest efforts of this Board and of your Office, the claimant has failed to make himself available for investigative process as recommended. The Appeal Board Panel and the Board, under these circumstances see no reason to accept the recommendations set forth in your Section 22(3) letter of February 8, 1978".

After considering the Board's response in this matter, the claimant's case was given further consideration by the Ombudsman. As a result of this effort, the Ombudsman remained convinced that the appropriate response of the Workmen's Compensation Board would have been to implement the second recommendation in the Ombudsman's Report of February 8, 1978. The Ombudsman concluded that in light of the complainant's refusal to submit to further medical examination and assessment, to determine the nature and extent of his organic disability, it would not be reasonable to pursue the first recommendation regarding organic disability.

Accordingly, on December 22, 1978, a copy of the Ombudsman's Report was forwarded to the Premier of Ontario, the Workmen's Compensation Board and the complainant. In his Report to the Premier, the Ombudsman stated:

> "I accordingly recommended pursuant to Section 22(3) of The Ombudsman Act, that the decision of the Workmen's Compensation Board in this case be varied. I also recommended that the Board reconsider its decision of June 24, 1976 and grant the complainant a new Hearing to establish his total organic disability, specifying the acute period and any degree of residual disability. It was my recommendation that the Workmen's Compensation Board grant the complainant a 100% Provisional Pension from September 15, 1975 to September 15, 1978 for a psychological disability arising out of the treatment for a compensable liver dysfunction."

Due to the complainant's refusal to submit to further examination and assessment, the Premier was informed that our Office did not intend to pursue the recommendation made in connection with the residual organic disability. However, the Ombudsman did wish to draw to the Premier's attention the Board's refusal to implement the recommendation that the Board grant the complainant a 100% Provisional Pension from September 15, 1975 to September 15, 1978 for a

psychological disability arising out of the treatment for a liver dysfunction. This material was forwarded to the Premier pursuant to Section 22(4) and Section 22(5) of The Ombudsman Act, 1975.

The Premier's response, dated January 22, 1979, did not state that any steps would be taken to implement the Ombudsman's recommendation. Following receipt of the Premier's response, this file was closed.

DETAILED SUMMARY NO. 40

The complainant, a warehouse employee, sustained a back injury during the course of his employment on November 22, 1975 when he slipped and fell while pulling a loaded skid. The accident was reported on the following day, but the workman was able to continue with his employment until November 28, 1975. On December 1, 1975, the complainant's condition was diagnosed as thoraco-lumbar and lumbar spinal strain by the treating chiropractor who continued to treat the workman until January 13, 1976. Further appointments with this chiropractor were arranged; however, the workman discontinued treatment and did not provide an explanation for his absence. On February 10, 1976 the complainant was seen by a second chiropractor whose examination revealed muscle rigidity with some discomfort on leg flexion. It was noted that the complainant had a very low threshold of nerve irritability and in the opinion of the chiropractor, had he continued with treatment between January 13 and February 10, he would have been able to perform all work-related duties by this latter date. Treatment by this chiropractor continued until August 11, 1976.

A medical examination conducted at the offices of the Workmen's Compensation Board on March 31, 1976 revealed no residual disability except for mild tenderness on deep palpatation in the lower sacral area. It was concluded by the Board's surgical consultant that the complainant was fit to return to his regular work.

The workman received temporary total benefits from the Board for the period November 30, 1975 to May 10, 1976. Originally, payments for the period January 17, 1976 to February 10, 1976 were denied; however, the Appeal Board in a decision dated July 20, 1976 recognized that the workman was partially disabled during this period and directed that temporary total benefits be paid under Section 41(1)(b) of The Workmen's Compensation Act. The decision to allow benefits was based on a statement given to the Board by the treating chiropractor which indicated that the complainant had some degree of disability during this period of time; however, the chiropractor found it difficult to estimate the degree of disability as the disability seemed to be more subjective than objective. Compensation benefits

were restored on February 10, 1976 and continued until April 1, 1976 when they were terminated on the ground that the medical examination carried out at the Board's offices on March 31, 1976 revealed no residual disability.

The workman appealed this termination of benefits and, by a Commissioner of the Board decision dated November 10, 1976 it was concluded that since the complainant had undergone active treatment during the period April 1 to May 10, 1976 he was entitled to temporary total benefits for this period. The workman's claim for benefits subsequent to May 10, 1976 and for rehabilitation assistance was denied by the Appeal Board in its decision dated July 5, 1977 on the ground that the evidence presented did not establish that he had any continuing disability which could be considered related to the compensable accident of November 22, 1975.

Having exhausted all levels of appeal available to him at the Board, the complainant contacted his Provincial Member of Parliament for assistance. In a letter dated October 7, 1977, the Member's constituency assistant requested our Office to investigate this complaint. We proceeded to contact the complainant and determined that he was personally affected by a decision of the Appeal Board and therefore, the complaint was within the jurisdiction of the Ombudsman to investigate. The Board was informed, by letter dated October 14, 1977 of our intention to investigate this matter pursuant to Section 19(1) of The Ombudsman Act, 1975.

Our investigation involved a thorough examination of the complainant's Workmen's Compensation Board file and a number of interviews with the complainant.

Our investigation noted that subsequent to October 5, 1976 the workman received treatment from his family physician, a neurologist, a physiatrist and underwent extensive investigations and appraisal at a pain clinic. The only objective finding revealed through x-rays was the congenital disorder of spina bifida and the treating physicians were unable to establish the exact nature of the pathology producing the complainant's pain. In view of the difficulties encountered in evaluating some of the medical issues of this case, our Office decided to obtain a further opinion from an independent orthopaedic specialist. All the pertinent information was subsequently supplied to, reviewed and assessed by an orthopaedic specialist who had no previous involvement with this case. We requested that this physician specifically address himself to the existence of any causal connection between the workman's compensable accident and the symptoms he exhibited subsequent to May 10, 1976.

On October 18, 1978 our Office received a report from this specialist expressing the opinion that the most likely cause of the workman's continuing symptoms was a strain of the left sacroiliac ligaments which had only been temporarily

relieved by injections of local anaesthetic. It was noted that the complainant had, in the past, received such treatment and that it had produced almost instant success, causing the treating physician to raise the possibility of psychological overlay as such dramatic relief was not to be found normally. The reviewing specialist also addressed himself to the question of whether or not the congenital disorder of spina bifida was a factor in delaying the workman's recovery. His opinion was that it was not.

In summary, it was concluded by the orthopaedic specialist that the complainant's problem had been thoroughly investigated and treated by the physicians of various medical disciplines and that clinical testing, including a myelogram and discogram produced negative findings. It was the opinion of this physician that no further investigation or consultation was required and that the symptoms the workman exhibited subsequent to May 10, 1976 were not significantly disabling nor related to the original injury of November 22, 1975.

After considering the results of our investigation, we found that we were unable to support the workman's contention that he was entitled to temporary total disability benefits subsequent to May 10, 1976 as a result of his compensable accident of November 22, 1975. Accordingly, the Board and the complainant were advised by a letter dated November 23, 1978 that we had concluded our investigation and would now proceed to close our file.

DETAILED SUMMARY NO. 41

The complainant, employed as a nursing supervisor, sustained an abdominal injury during the course of her employment on April 23, 1976 while attempting to prevent an agitated patient from falling from her bed. The incident was reported immediately and during a subsequent examination by her family physician, the complainant was diagnosed as having developed a rectocoele and cystocoele (hernia protrusions of part of the rectum and urinary bladder through the vaginal wall). This diagnosis was later confirmed by the treating gynaecologist who advised the complainant that she could return to work but should confine herself to light duty only. The gynaecologist recommended that the complainant undergo surgical repair although this procedure could not be undertaken until a pre-existing heart condition had been regulated. The complainant was examined on a regular basis by her cardiologist between the date and her surgery on July 28, 1976. She continued to report for work in spite of her persisting discomfort.

The Review Branch of the Board in its decision of November 1, 1976 allowed the complainant's claim for initial medical aid by the family physician and the initial consultation with the treating gynaecologist. Entitlement for surgery and the subsequent 22-day layoff from work was denied on the basis that a further opinion obtained from the Board's Surgical Consultant did not support a relationship between the necessity of the surgery and the complainant's work-related activities on April 23, 1976. The Appeal Board Decision dated June 29, 1977 noted that although the complainant did describe a significant strain at work, the medical evidence indicated that the cystocoele and rectocoele pre-existed this incident and therefore it was the consensus of medical opinion that the strain at work on that day did not contribute to the subsequent surgery.

Having exhausted all levels of appeal available to her at the Board, the complainant contacted the Union of Injured Workers for assistance. In a letter dated July 21, 1977, a representative of this organization requested our Office to investigate this complaint. We proceeded to contact the complainant and we determined that she was personally affected by a decision of the Appeal Board and therefore, the complaint was within the jurisdiction of the Ombudsman to investigate. The Board was informed, by letter dated August 10, 1977, of our intention to investigate this matter pursuant to Section 19(1) of The Ombudsman Act, 1975.

Our investigation involved a thorough examination of the complainant's Workmen's Compensation Board file and a personal interview with her at our Office. As well, the treating gynaecologist was contacted for further medical clarification. Our investigation noted that at the time of reaching its decision, the Appeal Board also had before it a report of the treating

gynaecologist who expressed the opinion that while a cystocoele and rectocoele repair may have been required in the future, there was no question that the straining at work had made this repair necessary at an earlier date.

Following our preliminary investigation, we were of the opinion that the Board may have acted in a manner which would come within the provision of Section 22(1) of The Ombudsman Act, 1975 in concluding that it was the consensus of medical opinion that the strain at work on that date did not contribute to the subsequent surgery.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the complainant's employer and the Chairman of the Board were informed that, based on our investigation at that point, there existed sufficient grounds for the making of a report or recommendation that would adversely affect the Workmen's Compensation Board and the employer. The two parties were invited to make representations respecting our possible adverse report or recommendation based on the following possible conclusions and possible recommendation:

"a. Possible Conclusions

1. I am currently of the opinion that the Appeal Board wrongly concluded that it was the consensus of medical opinion that the strain at work on that day did not contribute to the subsequent surgery. It is my opinion that this position is supported by the following documents:

(i) a report dated November 30, 1976 from [the complainant's] gynaecologist who performed the required surgery on July 28, 1976; this report indicated that while the complainant may have required a cystocoele and rectocoele repair in the near future, there was no question that the straining at work had made the anterior and posterior repair necessary at an earlier date;

(ii) a letter [to the complainant] dated November 3, 1976 prepared by the Workmen's Compensation Board's Claims Review Branch which stated in part that it could not be found that the cystocoele and rectocoele were caused by the strain at work, and therefore must have pre-existed the incident on April 23, 1976. This same letter went on to say that on the other hand, it was found that the strain involved in that incident had precipitated the prolapse.

2. It is open to me to conclude that the decision of the Appeal Board to deny [the complainant] benefits was wrong. I am of the opinion that this is substantiated by the medical evidence on file previously noted, which indicated that the strain at work was a significant contributing factor to the need of the subsequent surgery.

b. Possible Recommendation

1. The Appeal Board should cancel its decision and recognize [the complainant's] claim for Total Temporary Benefits relating to her accident of April 23, 1976 on the basis that this accident aggravated her pre-existing condition to the point where surgery was required."

The complainant's employer made verbal representation on January 6, 1978 informing us that he was in complete agreement with our possible recommendation that the complainant's claim for benefits be recognized. A senior official of the Board telephoned our office on January 24, 1978 indicating the Board's intention to request an independent medical assessment of the complainant's file, after which the matter would receive further consideration. This verbal statement was confirmed by the Board in a letter dated February 20, 1978. The appointed physician, a specialist in obstetrics and gynaecology, reviewed the complainant's pre-accident history and the treatment she received subsequently. In addition, on April 21, 1978, the complainant attended the office of this physician for a physical examination.

The Board advised us by letter dated September 22, 1978 that the Appeal Board Panel had reconsidered the complainant's claim and on September 22, 1978 had cancelled its previous decision and rendered a new decision which read, in part, as follows:

> "[the independent specialist's] report has been received and reviewed by the Appeal Board Panel. In his report [this physician] stated 'that the incident was rather severe in causing sudden increased intro-abdominal pressure which was the precipitating factor in the resultant aggravation of what I think was a pre-existing cystocoele and rectocoele."
>
> "On the basis of [the specialist's] findings the Appeal Board Panel concludes that [the complainant's] accident of April 23, 1976 aggravated her pre-existing condition leading to the surgery performed on July 8, 1976."

The Appeal Board's further decision rectified the complaint. Accordingly, the Board and the complainant were advised by a letter dated November 8, 1978 that under the circumstances, we had discontinued our investigation and would now proceed to close our file.

DETAILED SUMMARY NO. 42

This complainant telephoned our Office with respect to a delay in receiving ongoing temporary total disability benefits from the Workmen's Compensation Board.

He indicated that he had not received any benefits for four weeks and he did not understand why his benefits had seemingly ceased.

On the day this complaint was brought to the Ombudsman's attention, an initial inquiry was made with an official of the Board. Three days later, our investigator was informed by an official of the Claims Branch that the delay had occurred because the Board had not received up-to-date medical reports from the complainant's physician which were necessary to establish the complainant's present degree of disability.

Having been advised by the complainant that he had sought the continual attention of his treating physician throughout the period in question, our investigator requested that the Claims Branch contact the doctor directly in an attempt to secure the required medical reports. Later that same day, the Board advised that the necessary authorization for payment had been received and the complainant's claim would be processed immediately. The investigator then telephoned the complainant to advise him that the delay had been corrected.

In subsequent follow-up inquiries made by the investigator a few days later, the Board advised that awards of $937.50 and $187.50 had been processed and the complainant's total disability benefits had been paid up to date and would be continuing. The award of $937.50 which represented the outstanding four weeks' benefits owing when the complainant initially contacted the Ombudsman's Office, was processed within three days following our inquiry.

DETAILED SUMMARY NO. 43

The complainant in this case was employed as a janitor for a motel. In November of 1967, during the course of his employment, the workman strained his low back while lifting a pail of water. Following this injury, the worker was examined by his family physician who diagnosed a low back strain and prescribed bedrest. Due to his continuing complaints, the worker was referred to an orthopaedic surgeon for further examination. Following an extensive examination, the orthopaedic surgeon diagnosed a possible disc herniation. A claim was submitted to the Workmen's Compensation Board and the worker received Temporary Total Disability Benefits retroactive to the date of his injury.

Following a reasonable recuperation period, the worker failed to return to work and continued to consult different specialists regarding his back condition. All of the medical reports submitted to the Workmen's Compensation Board during this recuperation period indicated that although the worker suffered from a definite back disability, his major disability was non-organic in nature. The doctors were of the opinion that the worker intensified the seriousness of his disability. In May of 1968, the worker was admitted to the Board's Hospital and Rehabilitation Centre in Downsview. He remained at this hospital until June of 1968 at which time he was again advised to return to work.

In March of 1969, the worker's disability was assessed by the Workmen's Compensation Board. As a result of this assessment, the worker received a 10% two-year Provisional Award recognizing the degree of low back disability resulting from the compensable injury. This award was later confirmed on a permanent basis. In November of 1975, the worker approached the Workmen's Compensation Board requesting an increase to his disability pension. The Board considered this request and the worker was again assessed to determine the residual degree of disability related to the compensable injury. Following this second assessment, the worker's pension was increased to 15%. A further assessment took place in January of 1976 at which time the disability pension was again increased to 20%. Following this latter assessment, the worker appealed the amount of his pension through all levels of the Board's appeal structure. At an Appeal Board Hearing held in 1977, the consideration was given to granting further entitlement to the worker on both organic and psychological basis. Before making a final ruling in this matter, the worker's file was reviewed by the Board's Surgical Consultant and Senior Pensions Consultant. These doctors submitted reports stating that the worker's 20% disability pension adequately recognized the residual degree of low back disability as a result of the compensable injury. The Board also ruled that the worker was not entitled to compensation benefits on a psychiatric basis. Accordingly, the worker's appeal was denied. After receiving this adverse decision, the worker forwarded his complaint against the Workmen's Compensation Board to the Ombudsman's Office.

Having exhausted all of his rights of appeal, the worker's complaint fell within the Ombudsman's jurisdiction. In August of 1977, the Chairman of the Workmen's Compensation Board was notified, pursuant to Section 19(1) of The Ombudsman Act, 1975, of our intention to investigate this complaint. In this initial letter, the Board was requested to forward a photocopy of the worker's file to our Office. Investigation of this complaint consisted of a complete view of the claimant's Workmen's Compensation file in addition to discussions with senior officials of the Board.

The investigation of this complaint revealed that the available medical evidence did not support the worker's contention that the decision submitted by the Appeal Board Panel was unreasonable to deny a pension increase in his claim. The investigation did, however, reveal that insufficient medical evidence existed to properly assess the psychiatric component of the worker's disability which appeared to be in part, attributed to the compensable injury. Accordingly, in August of 1978, the Ombudsman forwarded a letter to the Chairman of the Workmen's Compensation Board pursuant to Section 19(3) of The Ombudsman Act, 1975, offering the Board an opportunity to respond to the Ombudsman's possible conclusion and recommendation which were stated as follows:

"Possible Conclusion

It would appear open to me to conclude that the Appeal Board Decision of June 23, 1977 was unreasonable in that it rejected [the worker's] claim for benefits for the psychological component of his disability, without first seeking psychiatric opinion.

The administrative notes contained in [the worker's] Workmen's Compensation Board file indicate that on March 17, 1977, the Board ruled that [the worker] was not entitled to benefits on a psychiatric basis. This decision was recommended by a Claims Adjudicator, and then authorized by one of the Board's medical doctors. The decision to deny [the worker] benefits appears to have been neither considered or confirmed by one of the Board's psychiatrists. It also appears that the Appeal Board Panel did not have [the worker] examined by a psychiatrist before rendering a decision regarding psychiatric entitlement. I have also noted that the majority of orthopaedic surgeons and neurosurgeons involved with [the worker's] claim have expressed the opinion that the worker suffers from a severe psychological disability.

[The worker's] present physician, [ ] has submitted a report to the Board, dated February 16, 1977, which in part, states 'My opinion is that [the worker] suffers from a severe post-traumatic neurosis with symptoms of anxiety, hysteria and depression. Certainly he is completely disabled and I feel he will never be rehabilitated'.

In light of the comments submitted to the Board by [the worker's] family physician, it would have been appropriate for the Workmen's Compensation Board to have [the complainant] assessed by a psychiatrist to determine the extent and origin of his disability.

Possible Recommendation

It would appear open to me to recommend, pursuant to Section 22(3)(c) of The Ombudsman Act, that the Workmen's Compensation Board vary its decision of June 23, 1977 and order that [the worker] be examined by an Italian-speaking psychiatrist to assess the degree of his psychological disability which may be related to the compensable injury and compensate him accordingly."

The Investigator assigned to this case was informed, by a representative of the Board, that the employer in this case would not be adversely affected by the Ombudsman's possible recommendation and was therefore not informed of his possible conclusion or recommendation.

The Chairman of the Board responded to the Ombudsman's possible recommendation by letter which informed this Office that the Appeal Board Panel had agreed to have the worker assessed by a psychiatrist in order to properly determine if a relationship existed between the psychiatric condition and the compensable injury. The worker was examined in September of 1978 by a Board-appointed psychiatrist. After receiving the doctor's report, the Workmen's Compensation Board suggested that a meeting be held with the members of the Appeal Board Panel and representatives of our Office to discuss the contents of the doctor's report. Following the meeting the Appeal Board rendered a new decision awarding the worker a 10% Permanent Disability Award in recognition of his psychiatric disability.

As a result of the investigation conducted by our Office, the Ombudsman concluded that the Appeal Board Panel in its decision of June, 1977 was not unreasonable to deny the worker an increase in his Permanent Disability Award for the organic disability related to the compensable injury. The Ombudsman also concluded that the benefits granted in the second Appeal Board Decision, dated December, 1978 adequately compensated the worker for the non-organic portion of his disability as related to the compensable accident. In March of 1979, a final report was forwarded to the Workmen's Compensation Board and the complainant outlining the results of this investigation.

DETAILED SUMMARY NO. 44

This complaint was received at an Ombudsman Hearing and concerned two separate issues of the complainant's compensation claim.

The complainant requested the assistance of the Ombudsman's Office in determining; (1) when the W.C.B. was to assess her residual disability for consideration of a Permanent Partial Disability Award; and (2) why, subsequent to repeated personal inquiries, the weekly rate previously awarded for a period of temporary total disability benefits had not been upwardly adjusted.

1. Our Investigator's initial contact with officials of the W.C.B. revealed that a permanent disability assessment had been scheduled. This information was brought to the immediate attention of the complainant by telephone.

2. Our Investigator's discussion with a W.C.B. official revealed that for a period of approximately two years, the complainant had received temporary total disability benefits, at a weekly rate of $110.87, when attending a program under the auspices of the Vocational and Rehabilitation Branch of the W.C.B. At that time, the weekly rate of benefits payable had been calculated in accordance with the provisions of The Workmen's Compensation Act.

However, by a decision of the Appeal Board (approximately one and a half years subsequent) the complainant was awarded temporary total disability benefits for a period of lost time immediately prior to the Rehabilitation Program. The weekly rate of compensation payable for this period of time had been calculated in accordance with the provisions of section 40 of The Workmen's Compensation Act and provided a weekly rate of $170.08.

It was brought to the W.C.B.'s attention by our Investigator that the W.C.B. had not given consideration to the fact that section 40 of The Workmen's Compensation Act (or the compensable weekly rate of $170.08) could now be applied to the period in which the complainant had attended the Rehabilitation Program. This would increase the weekly rate of compensation payable and was the issue the complainant had been drawing to the Board's attention for the past five months.

As a result, the higher weekly rate was applied, resulting in an adjustment award of some $6,145.

DETAILED SUMMARY NO. 45

The complainant, a baker, sustained a back injury when he slipped while lifting a bag of dough weighing approximately 100 pounds. The incident was reported and during a subsequent examination, a diagnosis of lumbar disc pain with possible disc disease was made by the claimant's family doctor. Entitlement was granted by the Workmen's Compensation Board and the claimant commenced to receive Total Temporary Benefits.

During the next three months following the accident, the complainant was treated by his family doctor for complaints of continuing back pain. In August of 1974, he was referred to an orthopaedic specialist who was of the view that there was no definite structural abnormality. In September 1974, the complainant was admitted to the Workmen's Compensation Board's Hospital and Rehabilitation Centre for further investigation of his complaints. No significant positive findings indicative of nerve root compression could be identified in the lumbar area; however, a post-traumatic anxiety neurosis was diagnosed. A psychiatric examination undertaken while the complainant was in the hospital revealed that while the complainant undoubtedly had a strain of his lower back with quite bona fide clinical symptoms of acute sciatica, the patient was manifesting symptoms of hysteria and complicated his old sciatica pain by statements of pain that was more the expression of his apprehension of returning to work and stressing his back by lifting heavy flour bags.

On discharge from hospital, the complainant was advised to return to light work. He attempted to do this on October 22, 1974 but lasted only one hour because of back pain. Full benefits were reinstated and on March 10, 1975, the complainant was examined again at the Workmen's Compensation Board offices where two staff doctors were of the opinion that, "There was obviously a gross hysterical factor" involved in this man's condition. A further orthopaedic examination carried out on March 24, 1975 indicated "That this patient presents more neuropsychiatric than orthopaedic problems." Two further psychiatric consultations carried out respectively on June 27, 1975 and January 12, 1976 revealed hysterical symptoms and a psychiatric disability to the level of 10 to 30%. On February 4, 1976, the complainant ceased to receive Temporary Total Benefits from the Workmen's Compensation Board.

The complainant unsuccessfully appealed the termination of further benefits through the appeal system of the Workmen's Compensation Board. Having exhausted all levels, he contacted the Injured Workers' Consultants for assistance. In a letter dated June 15, 1976 a representative of this organization requested our Office to investigate this complaint. We proceeded to contact the complainant and determined that he was personally affected by a decision of the Appeal Board and therefore, the complaint was within the jurisdiction

of the Ombudsman to investigate. The Board was informed, by letter dated June 26, 1976 of our intention to investigate this matter pursuant to Section 19(1) of The Ombudsman Act, 1975.

Our investigation involved a thorough examination of the complainant's Workmen's Compensation Board file and a number of personal interviews at our Office.

Our investigation noted that at the time of reaching its Appeal Board Decision of June 4, 1976, as well as an Application for Reconsideration on December 3, 1976, the Board had before it a number of reports indicating the presence of gross psychogenic overlay. The majority of the medical reports indicated that the complainant's physical disability had resolved itself.

Following our preliminary investigation, we were of the opinion that at the time the Board may have acted in a manner which would come within the provisions of Section 22(1) of The Ombudsman Act, 1975 in concluding that it was the consensus of medical opinion that there was no further disability, either physical or psychological, remaining.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the complainant's employer and the Chairman of the Board were informed that, based on our investigation at that point, there existed sufficient grounds for the making of a report or recommendation that would adversely affect the Workmen's Compensation Board and the employer. The two parties were invited to make representations respecting our possible adverse report or recommendation based on the following possible conclusions and possible recommendation:

"Possible Conclusions

I am currently of the opinion that the emotional components found consistently since the complainant's accident contributed significantly to his inability to resume active employment. Therefore, this worker should be entitled to a minimal Permanent Disability Award. It is my opinion that this position is supported by the following documents:

(i) the initial diagnosis at the time of the complainant's accident on June 27, 1974 described the injury as lumbosacral strain. In his first few progress reports, (the family doctor) was of the opinion that it would take the complainant from four to eight weeks to recuperate. However, very early in the claim, it became apparent that functional problems were complicating the complainant's recovery, as also indicated by the orthopaedic specialist's report and by the physicians at the Workmen's Compensation Board Hospital and Rehabilitation Centre.

(ii) (The psychiatrist's) report that the complainant was suffering from a hysterical reaction which the doctor believed was in part an "expression of the worker's apprehension at returning to work and stressing his back by lifting heavy flour bags."

(iii) The complainant's lack of success in his attempt to return to work in October, 1974 seemed to have reinforced his functional disability.

(iv) In March, 1975, the opinion of the Board's Surgical Consultants that, "A gross hysterical factor" was involved in the claim. As well, the orthopaedic specialist's examination revealing that the patient exhibited "more neuropsychiatric than orthopaedic problems."

(v) Following the above assessments, the complainant underwent a series of psychiatric consultations which indicated that he was partially disabled from a psychiatric point of view.

(vi) The medical practitioners who had dealt with the complainant seemed to unanimously agree that the injured worker was not able to return to his pre-accident employment and would be needing assistance in finding suitable alternative employment.

Possible Recommendation

1. The Appeal Board should reconsider its decision and recognize the claimant's entitlement to a Permanent Partial Disability Award and compensation for the loss of earnings he had suffered due to a functional disability which arose out of his June 27, 1974 compensable accident. To this end, the Workmen's Compensation Board should have the claimant and all the medical information on file assessed and reviewed by another independent psychiatrist, provided the claimant is willing to cooperate. The focus of this assessment should be whether or not the claimant has, since September 4, 1976, been partially disabled due to a functional disability and whether or not this disability is related to his compensable accident."

The complainant's employer, upon receipt of the Ombudsman's possible conclusions and recommendation, made oral representations on November 7, 1977 indicating its disagreement to these possible conclusions.

The Chairman of the Workmen's Compensation Board informed the Ombudsman that following consideration of his possible conclusions and recommendation, the Appeal Board had concluded the following:

> "The Appeal Board has decided to have the claimant's entitlement for psychiatric disability reviewed and assessed...the Appeal Board has received a report of the independent psychiatrist, and the opinion of the Board's consultant in psychiatry, and now concludes that the claimant be granted a 25% award for psychological disability related to his compensable accident for a 36-month from the fourth day of February, 1976 to be paid in a lump sum. The Appeal Board also directs that rehabilitation services be allowed to the claimant to assist him in returning to gainful employment. The Board also concludes that all costs arising from this decision of the Board be removed from the employer's accident cost record and charged to the Second Injury and Enhancement Fund."

Upon receiving the new decision of the Appeal Board, the Ombudsman concluded that the Board's original decision concerning entitlement for an organic disability was not unreasonable and the further actions taken by the Board in respect to psychiatric entitlement was appropriate. The Board and complainant were advised of the results of our investigation and the file was closed.

APPENDICES

APPENDIX A

RECOMMENDATIONS DENIED

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Consumer and Commercial Relations Residential Premises Rent Review Board			
3	11	Should the complainant decide to apply for judicial review, the Board should not oppose such an application. In the event of judicial review, it may be recommended that the Board agree to an order that the complainant's costs be paid on a solicitor and client basis.*	5, Recommendation #s 22 and 23 (p. 47)	(i) That where the Ombudsman, as a result of a complete investigation of a complaint, formulates the opinion that a decision of the Board comes within one of the subheadings of Sec. 22(1) of The Ombudsman Act and he recommends that the decision be altered, varied or amended in some way in accordance with Sec. 22(3) of The Ombudsman Act, and where the only means available in law is an application for judicial review, the Board, if it agrees with the Ombudsman's opinion and recommendation, should hereafter, to implement the recommendation, consent to the appropriate order in the Divisional Court which consent shall include all reasonable costs of the complainant on a solicitor and client basis.	
3	15	That the Ministry pay the legal costs of all parties involved in having these orders quashed and that the Board not oppose an application for judicial review.*	as above		
4	pp. 38 & 39; Section entitled "Rent Review"	That the Board should not oppose an application for judicial review, and should pay the costs of all parties to the application on a solicitor and client basis. *originally treated in 3rd Report as Recommendations Accepted but included in Fourth Report with Recommendations Denied.	"	(ii) That the Ministry cause an amendment to be made to Sec. 13(7) of The Residential Premises Rent Review Act by removing therefrom the phrase "within thirty days after making an order".	The Ministry has indicated that it is prepared to propose an amendment to Bill 163 which would remove the thirty-day time period. In the interim the Ministry is reviewing the position taken by the Rent Review Progamme.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Consumer and Commercial Relations Residential Premises Rent Review Board (con't)			
4	p. 39	That if the tenant were to apply for judicial review, the Board should not oppose the application and should pay the legal costs of all parties to the application on a solicitor and client basis.	5, Recommendation #s 22 and 23 (p. 47)	see previous page	see previous page
		Residential Premises Rent Review Programme			
4	p. 39 Section entitled "Rent Review"	That if the tenant were to apply for judicial review of the Rent Review Officer's order, the Programme should not oppose the application and that only the landlord's legal costs of the application should be paid.	as above		

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Government Services			
2	60	That the Ministry pay the complainant the sum of $1,318 for his losses and legal expenses.	3, Recommendation #34	That The Audit Act and The Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of The Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the result of these discussions are to be reported to the Select Committee.	Recommended amendments have yet to be enacted.
		Ministry of Health			
4	45	That the Ministry consider what changes should be made to The Public Hospital Act, Sec. 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Hospital Act with a view to preventing acts flowing from Sections 44 to 50 of that Act, which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as The Ontario Council of Health.	5, Recommendation #27 6, Recommendation #1	That the Ministry implement as soon as possible the recommendation of the Ombudsman. That the Ministry consider what changes should be made to The Public Hospital Act and in Sec.47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry cause an inquiry to be made into the provisions of The Public Hospital Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Health			
		Board of Directors of Masseurs			
5	32	That the Board return to the two examinations per year policy, and that the Board and the College of Massage and Hydrotherapy meet to discuss these matters.	not included		The Board will continue to hold twice yearly examination pending an expansion of the schools' curriculum.
		Ministry of Labour			
		Workmen's Compensation Board			
2	135	That the complainant be given further assistance by the Board Rehabilitation Dept. for a six month period.	3, Recommendation #37	The Board conduct a hearing in accordance with Sec. 75 of The Workmen's Compensation Act exercising all its powers of discretion and equity that the present circumstances of this claimant warrant.	
			5, Recommendation #6	The Board decided not to hold a hearing although the recommendation of Select Committee called for same. The Board after making certain inquiries, decided that no new evidence was available which could be considered in the usual way at a hearing. In the circumstances, the Committee considered the Board's response to be satisfactory. It also noted the Board's willingness to reconsider the matter. Accordingly, the Committee recommended that the Ombudsman's Office on a regular basis communicate with the complainant with a view to providing the Board forthwith with any new evidence coming to the office's attention which would cause the Board to reconsider the matter pursuant to Sec. 75 of The Workmen's Compensation Act. In making this recommendation, the Committee also reminded the Board of the Committee's views as to the Board's responsibility in this case.	The further information provided by the Ombudsman with that recently recorded on file has been reviewed by the Rehabilitation Branch. Its recommendation is now being considered by the Appeal Board.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
2	136	That the decision of the Board be varied and that temporary total disability benefits be extended to the complainant for the period of Feb. 23/74 to Apr. 17/74.	3, Recommendation #39	That the Board reconsider the decisions made by it previously respecting the claimant pursuant to Sec. 75 of The Workmen's Compensation Act, exercising its power of inquiry to obtain all relevant evidence respecting the nature of and status of the symptoms suffered by this person within the period in question with a view to determining whether the symptoms complained of were caused by the "aggravation by the work incident".	
			3, Recommendation #40	If the symptoms were caused by the work incident the Board should exercise its powers pursuant to Sec. 75 in favour of an award to this complainant without requiring the person to engage in the Board's entire process of a new claim.	
			5, Recommendation #7	The Board schedule a hearing as soon as possible respecting the complaint referred to in Recommendation #s 39 & 40 of the Select Committee's Third Report, and thereafter advise the Committee forthwith of the results of that hearing.	The original Ombudsman recommendation was accepted and carried out.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
3	75	That the Appeal Board vary its decision and pay compensation benefits to the complainant; that the Appeal Board reassess the complainant for a Permanent Disability Award.		Subsequent to the tabling of the Ombudsman's Third Report, the Board by an Appeal Board interim decision appointed a medical referee pursuant to Sec. 22(1) of The Workmen's Compensation Act for the purpose of reporting to the Board on the diagnosis of the workman's complaints. The Committee was advised by representatives of the Ombudsman's Office that they welcomed this action of the Board and that they recommended the Committee defer any further consideration of this complaint pending the report of the medical referee and subsequent actions of the Board, if any. The Committee accordingly agreed to defer any further consideration pending these events.	A new hearing was convened on this matter and adjourned pending the determination of the jurisdiction of the Appeal Board panel. The problem having been resolved, the adjourned hearing is now being reconvened.
			5, Recommendation #15	However, the Committee recommends that the Board take all appropriate actions in consequence of the medical referee's report forthwith upon receipt thereof and that thereafter the Board forthwith report any actions taken in consequence thereof to the Office of the Ombudsman.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
			5, Recommendation #16	Further, that the Ombudsman, within a reasonable time after he has been informed of the Board's actions subsequent to the receipt by it of the referee's report, advise the Committee of whether, in his judgement, the said actions are adequate and appropriate within the meaning of Sec. 22(4) of The Ombudsman Act.	
3	76	That the Board cancel its decision in this case and make benefits payable to the complainant for the lost time from work resulting from the accident which he appeared to have sustained while in the course of his employment.	5, Recommendation #19	That the Board forthwith formulate a policy of benefit of the doubt or reasonable doubt which policy is to be applied at all levels of decision-making within the Board, including the Appeal Board level	Appeal Board Hearing was arranged for March 19, 1979 at 10:30 a.m. and postponed at request of complainant who had been involved in a motor vehicle accident. Union representative will advise when complainant is ready is to proceed.
			5, Recommendation #20	Further, that when the policy of benefit of the doubt or reasonable doubt has been formulated and implemented, the Board forthwith hold a hearing pursuant to Sec. 75 of The Workmen's Compensation Act in respect of this claimant's claim for compensation. The Appeal Board panel constituted for such a hearing should consider expressly whether the policy of benefit of doubt is appropriate to be applied in this case, the Committee recommends that the employer be permitted to participate in the said hearing.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
3	77	That the decision of the Appeal Board to deny the complainant benefits be cancelled and that she be paid 25% benefits retroactive to April 22, 1972 and continuing for the duration of her disability.	5, Recommendation #17	That the Board rehear the matters contained in this complaint as quickly as possible and that thereafter it forthwith report its decision to the Ombudsman.	Partial acceptance of original recommendation. 10% awarded.
			5, Recommendation #18	Further, that the Ombudsman, within a reasonable time after he has been informed of the Board's decision, advise the Committee of whether, in his judgement, the said decision is adequate and appropriate within the meaning of Sec. 22(4) of The Ombudsman Act.	Done.
4	75	That the increase to the complainant in the level of the Permanent Disability Award from 10 to 15 per cent should have been made retroactive to March, 1965, the same date that the original award was made effective.	5, Recommendation #28	That an Appeal Board Panel of the WCB conduct a hearing forthwith for the purpose of determining whether the 5% pension should, in the circumstances, be more appropriately commenced as at March, 1965.	An Appeal Board hearing was arranged for Friday, March 23, 1979 at 1:30 p.m. No decision as yet.
4	76	That the Board's decision should be reconsidered and varied to allow the complainant entitlement under the medical aid provisions of The Workmen's Compensation Act to purchase an infra-red lamp which would better meet his needs than does the $25 variety which the Board previously allowed. The type of infra-red lamp should include a solid base, and a goose-neck to allow the adjustment of heat intensity and to allow the patient to administer his heat treatment in a supine position.	5, Recommendation #29	That the Board implement the Ombudsman's recommendations by granting the complainant entitlement to the sum necessary to purchase the commercial type heating lamp which has been previously requested.	New hearing to be convened pursuant to Sec. 75 of The Workmen's Compensation Act.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
			6, Recommendation #2	That the Legislature require the Workmen's Compensation Board to implement the recommendation of the Ombudsman made to the Board pursuant to Sec. 22(3) of The Ombudsman Act in complaint no. 76 as reported in his Fourth Report.	
4	77	That the Appeal Board vary its decision and order that the complainant receive a permanent partial disability award for the residual disability of his compensable accident. This award should be retroactive to the date of the worker's first injury excluding the periods in which the worker was in receipt of total temporary benefits.	5, Recommendation #31	That the Ombudsman forthwith obtain a medical report from the doctor in question in respect of the opinion attributed to him in the Ombudsman's Report pursuant to Sec. 22(3) of The Ombudsman Act. That report when received by the Ombudsman shall be forthwith transmitted to the Board.	Medical report supplied.
			5, Recommendation #32	That the Board upon receipt of that medical report conduct a hearing pursuant to Sec. 75 of The Workmen's Compensation Act and that the Appeal Board Panel presiding at that hearing consider the application of the policy of benefit of the doubt to the circumstances of this case.	Hearing held. Awaiting decision.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
			5, Recommendation #34	The Committee notes the assurance by the Vice Chairman of Appeals of the Board that upon receipt from the Ombudsman's Office of a written report from the doctor in question an Appeal Board Panel will be constituted immediately for reconsideration of this case pursuant to Sec. 75. If, by the time this report is tabled in the Legislature, the Board has in fact done this, then the Committee recommends that it advise it and the Ombudsman of the Board's decision as soon as it is rendered.	
4	78	That the decision of the Board be revoked and that benefits be made payable to the complainant in order to compensate him more appropriately for the seven months prior to his eligibility for Canada Pension Plan benefits.	5, Recommendation #35	That the Ombudsman conduct such further investigation as he deems necessary in respect of the issue of the prerequisite for supplementary benefits under Sec. 42(5) for the purpose of determining whether he can conclude the person's impairment of earning capacity is significantly greater than is usual for the nature and degree of injury.	Ombudsman's Office awaiting Board policy re Sec. 42(5) of The Workmen's Compensation Act.
			5, Recommendation #36	In the event that he is able to form the opinion that the impairment of earning capacity is significantly greater than is usual for the nature and degree of injury, then he shall so report same to the Board who shall, in that event, hold a rehearing of this case pursuant to Sec. 75 of The Workmen's Compensation Act.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
4	79	The Appeal Board should alter its original decision and award the worker Temporary Total Benefits for the period in which she was unable to work.	1, Recommendation #37	That the Board implement the recommendation of the Ombudsman set out in his report made pursuant to Sec. 22 of The Ombudsman Act.	Board refused to implement Committe recommendation.
			6, Recommendation #3	That the Legislature require the Board to implement the recommendation of the Ombudsman made to the Board pursuant to Sec. 22(3) of The Ombudsman Act.	
4	80	That the decision of the Appeal Board be varied to grant the complainant retroactive entitlement beyond Sept. 5, 1968 under Sec. 42(5) of The Workmen's Compensation Act as it then read. That these benefits should cover the period up to the date of the complainant's 65th birthday in January, 1972.	5, Recommendation #38	That the Board hold a hearing pursuant to Sec. 75 of The Workmen's Compensation Act to reconsider the complainant's entitlement to benefits under the old Sec. 42(5) of the Act. At that hearing, the Board is to specifically consider the factors of the complainant's age at the time of the injury and his ability, for whatever reason, to obtain other suitable employment between the time of the injury and age 65.	New hearing scheduled.
4	81	That the amount of the claimant's pension should be substantially increased and, further, that since it appeared from the medical evidence that his chest condition had remained constant, any increase in his pension should be paid retroactively from October 23, 1974.	5, Recommendation #79		The Committee was unable to support the recommendation of the Ombudsman.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
4	82	That the complainant receive 100% benefits from Dec. 12, 1967 through May 22, 1968 and 50% for the period from May 23, 1968 to June 29, 1969.		The Committee was advised that the Board had agreed to reconsider the recommendation made by the Ombudsman on the basis of evidence brought to the Board's attention of which it was not previously aware. The Ombudsman's Office and the Board also agreed to have discussions respecting a certain policy of the Board which may have an effect on the Board's further response to the Ombudsman's recommendation.	
			5, Recommendation #39	That the Board advise the Committee forthwith of its further response to the Ombudsman's recommendation as soon as it is made to the Ombudsman and thereafter the Ombudsman advise the Committee whether in his opinion that further response is adequate and appropriate.	
			6, Recommendation #4	That the Board increase the complainant's temporary partial disability beyond 50% for the period March 2, 1968 to May 22, 1968 by an amount determined by the Board to be appropriate in the circumstances.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.)			
5	57	That the Appeal Board should cancel its decision and award the complainant a greater permanent disability award which would more adequately reflect the medical opinions as to this man's permanent disability as a result of his two compensable accidents.	6, Recommendation #5	That the Board implement the Ombudsman's recommendation by awarding the complainant a permanent disability award which would more adequately reflect the prevailing medical opinions as to the permanent disability resulting from the two compensable accidents. In making this recommendation, the Committee is of the opinion that this disability award should be something in excess of 20%.	
5	58	The Appeal Board should cancel its decision dated Sept. 29, 1975 and order that the complainant receive entitlement for the periods he was totally disabled between June, 1973 and March, 1975 as a result of his left knee disability and entitlement to a permanent disability award which would recognize the permanent residual effects of his left knee replacement.	6, Recommendation #6	That the Workmen's Compensation Board implement the Ombudsman's recommendation by awarding entitlement to the complainant for the period of disability commencing June, 1973 and ending March, 1975.	
			6, Recommendation #7	That the Board assess and determine the nature and extent of the disability benefits for the period in question which it considers adequate and appropriate in the circumstances.	
5	59	That the benefit of doubt be extended to the claimant, and that the Appeal Board revoke its decision and order that a Widow's Pension be awarded. (cont'd. next page)	6		The Committee was unable to support the recommendation of the Ombudsman.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Labour Workmen's Compensation Board (con't.) That the Appeal Board consider, in the light of the total medical evidence now available, whether the late worker might reasonably have been eligible for benefits in his lifetime.			
5	60	That the Appeal Board should vary its decision dated March 3, 1976, and order that the complainant be granted entitlement to a Permanent Disabiltiy Award in recognition of a low back disability.	6, Recommendation #8	That the Board revoke its decision dated March 3, 1976 and order that the complainant is entitled to a permanent disability award respecting the low back disability for the periods referenced in the Ombudsman's Report.	
5	61	That the Appeal Board Panel reconsider its decision of June 27, 1977 with the view to grant the worker entitlement to compensation benefits for his injury of July 16, 1976.	6, Recommendation #9	That the Board implement the recommendation of the Ombudsman by awarding the complainant temporary total disability benefits for time lost at work as a result of the injury which occurred at work in July, 1976.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Management Board of Cabinet			
		Public Service Grievance Board			
3	58	The panel of the Public Service Grievance Board meet on an unofficial basis, and communicate to the officials of the College of Applied Arts and Technology responsible for decisions regarding personnel, the Board's view that, while the Board has not formal authority to reconsider its original decision, in view of the Ombudsman's findings concerning the Board's award, College should reinstate the complainant in a position on its academic staff equivalent to the position which he held at the time of his dismissal, without any compensation since the period of his dismissal from the College.	not included (complainant deceased)		
		Ministry of Revenue			
1	114	That consideration be given to the advisability of amending The Retail Sales Tax Act so as to exempt from retail tax, boats to be used as a permanent residence by the purchaser.	not included		

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		Ministry of Revenue (con't.)			
5	46	That the complainant receive GAINS benefits as from the date of the original application.	not included		Ombudsman decided against referring a copy of the report to the Premier pursuant to Sec. 22(4) of The Ombudsman Act.

APPENDIX B

RECOMMENDATIONS UNDER

SECTION 22(3) (d) or (e)

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Consumer and Commercial Relations					
1	31	That all necessary steps be taken to draft an amendment to The Vital Statistics Act which would enable the Registrar General to change the designation of the sex on the registration and certification of birth of those persons who have undergone transsexual surgery.	May 19, 1976	Policy submission to be prepared for Justice for policy field	2, Recommendation #20	That the Minister of Consumer and Commercial Relations table legislation as soon as possible to amend The Vital Statistical Act to provide authority in the Registrar General to make a sex designation change on a birth certificate of a person who has successfully undergone the necessary operative procedures, containing the appropriate safeguards to ensure that the effect of the sex designation change not be retrospective.	Amendment made to The Vital Statistics Act, see Sec. 31 (a) S.O. 1978, c. 81
					3, Recommendation #18	That the Minister introduce legislation clarifying and defining the status of persons affected by the sex designation change and the proposed amendment to The Vital Statistics Act, so as to avoid the creation of a 3rd category of persons in the Province of Ontario.	

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Consumer and Commercial Relations (con't.)					
2	26	That The Vital Statistics Act, be amended to make the order of the surname of a husband and the surname of a mother optional on the child's registration of birth.	Dec. 14, 1976	Ministry proposed to introduce amendment	3, Recommendation #17	That the Ministry table an amendment to The Vital Statistics Act, deleting the present requirement of registration that the father's name precede that of the mother's respecting the surnames of their children, thus affording the parents the option of choosing the order of the surnames.	Amendment made to The Vital Statistics Act; see Sec. 1 (3) S.O., 1978 c. 31
3	15	That The Residential Premises Review Act, be amended to provide that the Residential Premises Rent Review Board be empowered to reconsider any decision, order, declaration or ruling made by it and vary, amend, or revoke any such decision, order, declaration of ruling.	April, 1977	Minister asked staff to prepare amendments to the legislation which would give the Board power to reconsider decisions	5, Recommendation #23	(ii) That the Ministry cause amendment to be made to Sec. 13(7) of The Residential Premises Rent Review Act by removing therefrom the phrase "within thirty days after making an order".	The Ministry has indicated that it is prepared to propose an amendment to Bill 163 which would remove the thirty-day time period. In the interim the Ministry is reviewing the position taken by the Rent Review Programme.

OMBUDSMAN REPORT NO.	SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Consumer and Commercial Relations (con't.)					
		Liquor Control Board of Ontario					
4	22	That 1) any applicant for an agency outlet be advised that notwithstanding the views expressed by any servant of the Board, a final decision to grant such an agency outlet is made by the members of the Board alone, 2) given the findings the complainant was misled by a servant of the Board, the Board should further consider the complainant's application, 3) that the Board give the complainant reasons for its decision and that reasons be given to any applicant for an agency outlet if he is so denied.	Oct. 21, 1977	Board agreed to implement recommendation			
5	Line Summary 400 pg. 32	That 1) the Board pay compensation to the complainant in an amount to be determined for loss suffered as a result of wrongful dismissal. 2) The Board issue a written directive to all those persons responsible for hiring and supervising personnel, advising them that the labour activity of a part-time employee or applicant for a part-time employment in his full-time occupation is not a factor to be considered in determining whether to continue or to commence the employment of that employee or applicant.	Feb. 10, 1978	Chairman agrees to implement recommendation.			Compensation paid.

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Education					
2	47	That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power.	May 4, 1977	Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students.	3, Recommendation #23	That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities.	
		Ministry of Government Services					
2	57	That The Public Service Superannuation Act be amended in order to eliminate all restrictions on the re-employment of provincial superannuates except where the nature of their re-employment is such that they resume contribution to the Public Service Superannuation Fund.	Aug. 31, 1976	Executive Secretary of the Civil Service Commission agreed to recommend to Management Board of Cabinet changes in Public Service Superannuation Act.	3, Recommendation #24	That the Ministry table appropriate legislation in the Legislature during the current session removing the present restriction on the total current earnings of a provincial superannuate.	Necessary amendment has yet to be passed.

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Government Services (con't.)					
5	Line Summary 1569 pg. 111	That 1) included in the initial letter to an owner of expropriated property, there should be some indication that the Ministry would be willing to correspond directly with the property owner's solicitor if properly authorized to do so. 2) An authorization form to be executed by the property owner if desired, be enclosed in the original letter.	March 13, 1978	Recommendation accepted.			
		Ministry of Health					
3	40	That (1) all applicants for the right to construct a nursing home be informed well in advance of the due date for application, of the criteria upon which the Ministry intends to rely in making the award for a nursing home including the weight to be attached to each factor. (2) every unsuccessful candidate be provided with written reasons as to why his proposal was rejected based on these criteria. (3) The Nursing Home Act, 1972 be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon					

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Health (con't.)					
		the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence.	May 4, 1977	Agreed to implement recommendation.	5, page 32. The Committee considered this complaint for the purpose of follow-up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's 3rd Report. The Executive Chairman of the Area Planning Co-ordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the Ombudsman dated May 4, 1977. The Committee has attached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will continue to fully comply with the recommendations of the Ombudsman.		Necessary amendment has yet to be passed.

BUDSMAN PORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
V.	32	Ministry of Health (con't.) Board of Directors of Masseurs That the Board return to the two examinations per year policy and that the Board and the College of Massage and Hydrotherapy meet to discuss these matters.	January 11, 1978	recommendation denied			Recommendation implemented. The Board will continue to hold twice yearly examinations pending an expansion of the school's curriculum
4	45	That the Ministry consider what changes should be made to The Public Hospitals Act, Section 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of the Public Hospitals Act with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggested that this enquiry be assigned to an organization such as The Ontario Council of Health	January, 1978	The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason, the Ministry could only accept the Ombudsman's comments	#5, Recommendation #27 #6, Recommendation #1	That the Ministry of Health implement as soon as possible the recommendation of the Ombudsman. That the Ministry of Health consider what changes should be made to The Public Hospitals Act and Section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	As of February 27, 1979, the Ministry's position with regard to the composition and quorum of the Hospital Appeal Board is: (1) in any hearing by the Board, the quorum should be broadly representative of the interests involved in the issue; (2) previous experience on or professional connection with

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
4	45	Ministry of Health (cont'd)		and recommendations as informal observations and suggestions.			a hospital board is not necessarily inappropriate for at least the majority of members of the Hospital Appeal Board; (3) appointees to the Board should be chosen with an eye to their sense of balance and fairness to all interests; (4) the Ministry stated that it would contact the Chairman of the Hospital Appeal Board, to ascertain that he assents to the desirability of a representative quorum at all hearings. That assent would obviate the need for immediate legislative amendment.

OMBUDSMAN REPORT NO.	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		Ministry of Health (cont'd)					
4	45						(5) while ideally the legislative provision respecting a quorum of the Board should perhaps be amended, the Ministry did not anticipate being able to include a provision of this nature in its legislative program for the forthcoming Session.
I.	114	Ministry of Revenue That consideration be given to the advisability of amending The Retail Sales Tax Act so as to exempt from retail sales tax, boats to be used as a permanent residence by the purchaser			not included		

APPENDIX C

COMPREHENSIVE STATISTICAL SUMMARY

October 1, 1978 to
March 31, 1979

LIST OF TABLES

TABLE NUMBER	
1	CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT
2	REGIONAL COMPARISON OF CLOSED FILES AND ELECTORAL POPULATION
3	CLOSED FILES AND ELECTORAL POPULATION BY RURAL/URBAN DESIGNATION
4	FILE OPENINGS AND FILE CLOSINGS BY MONTH
5	FILE CLOSINGS BY DURATION CATEGORY
6	MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE
7	COMPLAINTS BY ORGANIZATION
8	OUTSIDE JURISDICTION COMPLAINTS BY REASONS
9	FINAL ACTION ANALYSIS/ASSISTANCE TO COMPLAINANTS
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13	COMPLAINT DISPOSITION SUMMARY
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APPENDIX C

The previous five reports to the Legislature included comprehensive statistical summaries, which, when taken together, cover the period from May, 1975 to September 30, 1978. This Sixth Report provides a comprehensive statistical summary for the period from October 1, 1978 to March 31, 1979. Comparable figures for the six month period covered by the Fifth Report are shown in square brackets. TABLE FOURTEEN provides definitions for the terminology used in this chapter. In addition, this Appendix contains a section headed "In Progress Files". This section summarizes the status and duration of all files that were in progress at the end of the period covered by this report.

At the beginning of the period covered by this report we changed our internal policy which governs the opening of a file, to the extent that, it is no longer necessary to open a file and dictate an interview summary in situations where in the course of an interview an appropriate referral is provided to the complainant. These no follow-up non-jurisdictional complaints and no follow-up information requests are documented by the interviewer on our complaint summary form for reference and statistical purposes. As a result, there were 504 fewer file openings and file closings. The following paragraphs reference the statistics that are affected by the change in our file opening policy.

COMPLAINT RECEPTION

HOW MANY COMPLAINTS WERE RECEIVED?

From October 1, 1978 to March 31, 1979 we received 2,376 [3,089] complaints for which we opened new files. In addition, there were 512 [521] new complaints which necessitated the re-opening of a complainant's file. Therefore, in total we received complaints relating to 2,888 [3,610] files. In addition, the Office received 2,558 [3,500] no follow-up complaints and information requests for which we did not open a file. Therefore, on an annual basis the Office is receiving approximately 11,000 [14,000] complaints and information requests.

HOW WERE COMPLAINTS RECEIVED?

The 2,888 complaints which warranted the opening of a file were received in the following manner:

67% by mail
20% by office interview
13% by hearing interview

The 2,558 no follow-up complaints and information requests for which we did not open a file were received in the following manner:

4% by office interview
80% by telephone interview
16% by hearing interview

DID COMPLAINTS COME FROM ALL REGIONS OF THE PROVINCE?

Once again, complaints originated from all regions of the Province. As in previous reports, TABLE ONE shows that more closed files were associated with complaints (472) [536] that originated from REGION NINE, ONTARIO-NORTH, than any other region. As shown in TABLE TWO, REGION NINE also had the highest complaint-to-population ratio. On the other hand, REGION EIGHT, OTTAWA-EAST was the source of the fewest number of complaints (196). REGION TWO, TORONTO-SUBURBS had the lowest complaint-to-population ratio. As noted in previous reports, the existence of correctional facilities in a particular area and the scheduling of private hearings in a particular area have a significant impact on the number of complaints received from a region. For example, electoral districts with correctional facilities accounted for 47% of all closed files, whereas these districts constitute only 30% of the provincial electoral population.

All electoral districts in TABLE ONE are designated with the letters (R), (U) or (M) depending on whether the preponderance of the polled population resides in a rural or urban setting. Where neither the rural nor the urban electoral population exceeds 66% of the total riding electoral population, the electoral district has been designated as mixed (M). TABLE ONE shows that there were rural, urban and mixed electoral districts where the number of closed files was either disproportionately high or low in relation to its electoral population. TABLE THREE shows that when these figures are considered on a province wide basis the rural, urban or mixed character of electoral districts does

not appear to be a significant factor affecting the ratio of files closed to electoral population. This pattern has persisted since the inception of the Office.

FILE CLOSINGS

HOW MANY FILES WERE CLOSED?

There were 3,126 [3,597] files closed during the period from October 1, 1978 to March 31, 1979. The monthly rate of file closings (521) [599] was lower than the previous reporting period because of the aforementioned change in our file opening policy. The monthly rate of file closings (521) was about the same as the monthly rate of file openings (481).

The disposition analysis of these closed files indicates that there were 538 [507] instances where the complainant's concern involved more than one complaint. As a result, the number of complaints on which the disposition statistics are based exceeds the number of closed files. Also, there were 512 [506] files closed which involved new complaints from citizens whose complaints were included in previous reports to the Legislature.

HOW LONG DOES IT TAKE TO CLOSE A FILE?

The 3,126 [3,597] files closed during this reporting period required an average of 112 [97] days to close. Files associated with jurisdictional complaints required an average of 170 [176] days, whereas files associated with complaints that were outside the Ombudsman's juridiction required an average of 68 [57] days. The increase in the average duration to close a file associated with a complaint that was outside the Ombudsman's jurisdiction is a result of the previously explained change in our policy which governs the opening of a file. As a result of the change in policy this figure no longer includes no follow-up complaints handled in the course of either an office interview or a hearing interview because files are not opened in these situations.

Again, the majority (76%) [76%] of files were closed within a 90-day period. TABLE FIVE shows that 1,261 [1,263] files were closed within a one-month period. The majority of these files were associated with non-jurisdictional complaints. For example, TABLE SIX shows that during the month of January, 1979, there were 75 files associated with non-jurisdictional complaints that were opened and closed within that month. The average duration to closing for

jurisdictional files includes 549 [508] files which required more than nine months to complete. Many (953) [675] files associated with jurisdictional complaints were closed within 90 days.

ORGANIZATIONS

WHICH GOVERNMENT AND PRIVATE ORGANIZATIONS WERE INVOLVED WITH THE COMPLAINTS?

TABLE SEVEN shows the organizations grouped in eight major categories:

I	Government of Ontario
II	Courts
III	Federal Government
IV	Private
V	Municipalities/Local Authorities
VI	Other Provinces
VII	International
VIII	No Organization Specified

The table also shows the jurisdictional determination for all closed complaints.

The majority of all complaints were directed against the ministries, agencies, boards and commissions of the Province of Ontario (2,567) [2,625]. The Ministry of Correctional Services accounted for 1,092 [1,034] or 43% [39%] of the Province of Ontario complaints. The Workmen's Compensation Board was involved with 335 [397] or 13% [15%] of the Province of Ontario complaints. Overall, 66% [69%] of the complaints against the Province of Ontario were directed at ministries, and the remaining 34% [31%] involved complaints against agencies, boards and commissions of the Province of Ontario.

The private sector accounted for 491 [753] or 13% [18%] of all complaints. In addition, municipalities and local authorities accounted for 236 [345] or 6% [8%] of all complaints. The Federal Government accounted for 154 [287] or 4% [7%] of all complaints. The decrease in the number of complaints relating to organizational areas outside the jurisdiction of the Ombudsman is attributable to the previously described change in our policy which governs the opening of a file.

COMPLAINT DISPOSITION

HOW DID YOU DISPOSE OF COMPLAINTS?

The disposition of closed complaints is summarized in the following paragraphs under the major headings:

(i) Jurisdiction
(ii) Final Action
(iii) Settlement

All complaint disposition figures are based on an exmination of 3,664 [4,224] complaints dealt with during this reporting period.

(i) JURISDICTION

HOW MANY COMPLAINTS WERE WITHIN YOUR JURISDICTION?

There were 1,502 [1,364] complaints within our jurisdiction as defined by The Ombudsman Act, 1975. The percentage of complaints within our jurisdiction during this reporting period (47%) is not comparable with the previous reporting period (37%) because our new file opening policy has significantly reduced the number of files opened for complaints outside the jurisdiction of the Ombudsman (1,713) [2,337]. These figures do not include either the 88 [56] instances where abandonments and withdrawals precluded a jurisdictional determination or the 361 [467] situations involving information requests and information submissions.

WHY WERE COMPLAINTS OUTSIDE YOUR JURISDICTION?

TABLE EIGHT shows the number of complaints associated with the various non-jurisdictional categories. The complaints fall into five major groupings.

The first group includes 196 [295] non-jurisdictional complaints involving municipalities, local authorities and private organizations, such as universities, which are funded either in whole or in part by the Province of Ontario.

The second group includes the 374 [547] premature complaints where the complainants had not exhausted the appeal remedies associated with their problems. These complaints fall into a special non-jurisdictional category, in that the complaints would become jurisdictional in the event that the complainant returns to our Office having exhausted his or her appeal remedies.

The third group includes the 146 [291] complaints directed at the Federal Government of Canada and the 20 [26] complaints involving other provinces and countries.

The fourth group includes complaints which are not within the Ombudsman's jurisdiction because investigations in these areas would constitute interference with the judicial, legislative or executive functions of government. These include complaints involving the courts (182) [206], a legal advisor to the Crown (8) [10] or the Cabinet (86) [19]. Also included in this group are 235 [278] complaints which did not involve a decision, recommendation or act of a "governmental organization" or did not affect the complainant "in his or its personal capacity" within the meaning of Section 15(1) of The Ombudsman Act, 1975.

Finally, the fifth group includes those non-jurisdictional complaints involving private individuals and self-funding private organizations. There were 466 [691] complaints in this category.

(ii) FINAL ACTION

WHAT FINAL ACTION DID YOU TAKE ON COMPLAINTS?

There are nine action categories which define the extent of the action taken by the Ombudsman. These action categories, as set out below, are defined in TABLE FOURTEEN:

(i) "Listen"
(ii) "Explain"
(iii) "Advise"
(iv) "Refer"
(v) "Inquire/Refer"
(vi) "Inquire"
(vii) "Suggest"
(viii) "Recommendation"
(ix) "Refuse to investigate or further investigate"

The definitions and headings associated with the action categories have not changed for this Report.

The number of complaints in each action category is outlined in TABLE NINE. The figures under the heading "All Complaints" include information requests, information submissions and complaints where the jurisdiction was not determined. The "Refer" (740) [1,148] and "Inquire/Refer" (396) [530] action categories include a large number of complaints because these actions are associated with the 1,713

[2,337] outside jurisdiction complaints. There were a large number of "Inquire" actions (1,646) [1,535] because this action category encompasses all jurisdictional investigations except where a "Suggest" or "Recommendation" action is involved.

In addition, TABLE NINE shows the assistance-related action provided to complainants. There is no assistance associated with the "Listen" and "Refuse to investigate or further investigate" action categories. On the basis of assistance-related action categories, 96% [97%] of all complainants received assistance. Assistance was provided in 94% [95%] of the jurisdictional complaints and 98% [99%] of the non-jurisdictional complaints.

(iii) SETTLEMENT

HOW MANY COMPLAINTS WERE RESOLVED?

TABLE TEN shows that 1,161 [1,106] of the 3,664 [4,224] complaints were resolved. The percentage of complaints that were resolved during this reporting period (32%) was about the same as during the previous reporting period (26%). Seventy-six percent (887) [863] of these complaints were resolved as a result of the assistance of the Ombudsman. TABLE ELEVEN shows that the majority of complaints where the Ombudsman assisted in the resolution occurred with respect to ministries and agencies of the Province of Ontario. As shown in TABLE FOURTEEN, a resolved complaint is defined as a "... complaint which culminates in a settlement result which favours either the complainant or the organization complained against. All resolved complaints include a determination of whether the complaint was resolved with the assistance of the Ombudsman or independently."

TABLE TEN also shows that a large number of complaints (2,503) [3,118] could not be resolved. With the exception of the few complaints (54) [17] where the Ombudsman decided to "Refuse to investigate or further investigate", the complaints which were not resolved involved factors which precluded a complaint resolution. In 1,625 [2,264] unresolved cases, the complaint was outside the jurisdiction of the Ombudsman. In other cases the complaint was abandoned, withdrawn or circumstances changed in the course of the investigation. In addition, there were 11 [10] complaints where the Ombudsman supported the complainant's allegation but the recommendation pursuant to Section 22 (3) of The Ombudsman Act, 1975 was not accepted by officials of the "governmental organization".

HOW MANY RESOLVED COMPLAINTS WERE SETTLED IN FAVOUR OF THE COMPLAINANT?

There were 496 [453] complaints resolved in favour of the complainant. A significant number of these complaints (222) [210] were resolved through the assistance of the Ombudsman. Additionally, there were 274 [243] complaints that were independently resolved in favour of the complainant. Some of these complaints were categorized as independently resolved even though there was involvement on the part of the Ombudsman's staff. However, we were unable to determine conclusively that our involvement was predominantly responsible for the settlement in favour of the complainant.

The 220 [210] complaints which were resolved in favour of the complainant, as a result of the Ombudsman's assistance, fell into three categories:

(a) There were 181 [167] complaints that were resolved in the course of the investigative process when previously unknown information was brought to the attention of the complainant and the officials of the organization complained against.

(b) There were 36 [37] complaints where, in the course of an investigation, a suggested settlement scheme was found to be acceptable to all parties.

(c) There were 5 [6] complaints where, upon the completion of an investigation, the Ombudsman made a recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975 which was accepted by officials of the "governmental organization".

On the other hand, the 665 [653] complaints which were resolved in favour of the "governmental organization" occurred as a result of the assistance provided by the Ombudsman when a decision was made to support the position of the "governmental organization". Thus, the Ombudsman assisted in the resolution of these cases to the extent that the settlement result in favour of the "governmental organization" was based on the Ombudsman's finding.

IN PROGRESS FILES

HOW MANY FILES WERE IN PROGRESS AT THE END OF THE PERIOD COVERED BY THE REPORT?

There were 1,914 [1,858] in progress files as of March 31, 1979. TABLE TWELVE shows both the status and the duration of all in progress files. A total of 1,528 [1,433] of these files were within the jurisdiction of the Ombudsman. This constitutes 79% [77%] of all in progress complaint files. The percentage of jurisdictional in progress files confirms the suggestion expressed in our Fourth Report and our Fifth Report that, notwithstanding the handling of a large number of non-jurisdictional complaints, the preponderance of staff resources has been assigned to jurisdictional complaints involving substantial investigative and legal research work.

TABLE NO.: 1	TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT



THE PROVINCE OF ONTARIO

TABLE NO.: 1 (i)	TITLE:	CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION

NUMBER	NAME
1	Toronto-Centre
2	Toronto-Suburbs
3	Golden Horseshoe
4	Ontario West-Central
5	Ontario Western-Ring
6	Toronto North-East Corridor
7	Ontario North-Central
8	Ottawa-East
9	Ontario-North

Note: The designations below apply to the schedules found in this table.

(1) An asterisk -*- indicates a constituency where a correctional facility is located.

(2) The notations (R), (U) or (M) designate the constituency as (R) Rural, (U) Urban or (M) Mixed Urban-Rural. Electoral population figures are based on the number of names on the polling list as taken from Pages 26-29 "1977 Ontario Election Summary From the Records".

(3) This table is based on 2888 closed files where a constituency determination could be made.

TABLE NO.: 1 (ii) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION ONE: TORONTO-CENTRE

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Beaches-Woodbine	38,432 (U)	14	6.9	3.9
Bellwoods	20,962 (U)	11	3.8	3.0
Don Mills	50,717 (U)	72	9.1	19.9
Dovercourt	23,822 (U)	8	4.3	2.2
Eglinton	47,471 (U)	24	8.5	6.6
High Park-Swansea	38,708 (U)	26	6.9	7.2
Oakwood	33,027 (U)	12	5.9	3.3
Parkdale	28,178 (U)	10	5.0	2.8
Riverdale	30,954 (U)	12	5.5	3.3
Scarborough West	38,994 (U)	14	7.0	3.9
St. Andrew-St. Patrick	35,383 (U)	29	6.3	8.0
*St. David	39,026 (U)	72	7.0	19.9
St. George	45,833 (U)	34	8.2	9.4
York East	45,058 (U)	11	8.1	3.0
York South	43,060 (U)	13	7.7	3.6
T O T A L S	559,625	362	100%	100%
Percentage of Total Electoral Population	10.9%			
Percentage of Total Closed Files		12.5%		

TABLE NO.: 1 (iii) TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION TWO: TORONTO-SUBURBS

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Amourdale	48,794 (U)	16	7.3	6.8
Downsview	35,039 (U)	15	5.3	6.4
Etobicoke	39,606 (U)	62	6.0	26.5
Humber	56,864 (U)	15	8.6	6.4
*Lakeshore	43,035 (U)	39	6.5	16.7
Oriole	50,052 (U)	9	7.5	3.8
Scarborough Centre	40,661 (U)	5	6.1	2.1
Scarborough East	46,332 (U)	10	7.0	4.3
Scarborough-Ellesmere	41,290 (U)	12	6.2	5.1
Scarborough North	65,593 (U)	12	9.9	5.1
Wilson Heights	43,771 (U)	7	6.6	3.0
York Mills	56,308 (U)	18	8.5	7.7
York West	52,976 (U)	7	8.0	3.0
Yorkview	44,057 (U)	7	6.6	3.0
T O T A L S	664,378	234	100%	100%
Percentage of Total Electoral Population	13.0%			
Percentage of Total Closed Files		8.1%		

TABLE NO.: 1 (iv) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION THREE: GOLDEN HORSESHOE

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Brampton	59,187 (U)	33	7.3	8.8
Brock	35,346 (U)	12	4.4	3.2
Burlington South	56,545 (U)	10	7.0	2.7
*Halton-Burlington	43,337 (U)	86	5.4	22.9
Hamilton Centre	38,003 (U)	17	4.7	4.5
Hamilton East	48,620 (U)	9	6.0	2.4
Hamilton Mountain	46,192 (U)	7	5.7	1.9
*Hamilton West	41,056 (U)	60	5.1	16.0
Lincoln	31,387 (U)	10	3.9	2.7
Mississauga East	44,089 (U)	15	5.5	4.0
Mississauga North	55,251 (U)	14	6.9	3.7
Mississauga South	42,511 (U)	10	5.3	2.7
Niagara Falls	45,208 (U)	10	5.6	2.7
Oakville	40,194 (U)	25	5.0	6.6
St. Catharines	52,660 (U)	14	6.5	3.7
*Welland - Thorold	39,712 (U)	29	4.9	7.7
Wentworth	39,420 (U)	7	4.9	1.9
Wentworth North	47,903 (U)	8	5.9	2.1
T O T A L S	806,621	376	100%	100%
Percentage of Total Electoral Population	15.7%			
Percentage of Total Closed Files		13.0%		

TABLE NO.: 1 (v) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION FOUR: ONTARIO WEST-CENTRAL

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Brantford	44,311 (U)	44	8.4	14.2
Brant-Oxford-Norfolk	38,328 (R)	7	7.3	2.3
Cambridge	46,081 (U)	13	8.8	4.2
Erie	31,564 (U)	4	6.0	1.3
*Haldimand-Norfolk	44,142 (R)	16	8.4	5.2
Kitchener	46,835 (U)	15	8.9	4.9
Kitchener-Wilmot	42,181 (U)	10	8.0	3.2
Oxford	50,501 (M)	18	9.6	5.8
*Perth	43,680 (M)	19	8.3	6.1
Waterloo North	44,263 (U)	11	8.4	3.6
Wellington-Dufferin-Peel	46,325 (R)	31	8.8	10.0
*Wellington South	47,868 (U)	121	9.1	39.2
T O T A L S	526,079	309	100%	100%
Percentage of Total Electoral Population	10.3%			
Percentage of Total Closed Files		10.7%		

TABLE NO.: 1 (vi) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION FIVE: ONTARIO WESTERN-RING

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Chatham-Kent	39,222 (U)	30	5.5	8.7
Elgin	38,858 (M)	14	5.5	4.0
Essex North	33,938 (M)	8	4.8	2.3
Essex South	36,073 (R)	21	5.1	6.1
Grey	36,455 (R)	17	5.2	4.9
*Grey-Bruce	35,539 (M)	35	5.0	10.1
Huron-Bruce	35,985 (R)	53	5.1	15.3
Huron-Middlesex	30,130 (R)	9	4.3	2.6
Kent-Elgin	33,007 (R)	10	4.7	2.9
Lambton	31,379 (R)	7	4.4	2.0
*London Centre	47,683 (U)	19	6.7	5.5
London North	48,617 (U)	11	6.9	3.2
London South	59,614 (U)	26	8.4	7.5
Middlesex	32,446 (R)	13	4.6	3.8
*Sarnia	46,807 (U)	13	6.6	3.8
Windsor-Riverside	47,174 (U)	20	6.7	5.8
Windsor-Sandwich	37,419 (U)	29	5.3	8.4
Windsor-Walkerville	37,698 (U)	11	5.3	3.2
T O T A L S	708,044	346	100%	100%
Percentage of Total Electoral Population	13.8%			
Percentage of Total Closed Files		12.0%		

TABLE NO.: 1 (vii) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION SIX: TORONTO NORTH-EAST CORRIDOR

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Dufferin-Simcoe	48,888 (M)	25	11.3	11.0
Durham East	47,393 (U)	6	11.0	2.6
*Durham West	46,823 (R)	30	10.8	13.1
Durham York	41,693 (U)	15	9.6	6.6
Oshawa	41,124 (U)	9	9.5	3.9
*Simcoe Centre	52,644 (M)	99	12.2	43.2
Simcoe East	44,578 (M)	20	10.3	8.7
York Centre	58,784 (U)	11	13.6	4.8
York North	50,833 (M)	14	11.8	6.1
T O T A L S	432,760	229	100%	100%
Percentage of Total Electoral Population	8.5%			
Percentage of Total Closed Files		7.9%		

TABLE NO.: 1 (viii) TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION SEVEN: ONTARIO NORTH-CENTRAL

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Frontenac-Addington	35,040 (R)	9	8.0	2.5
Hastings-Peterborough	33,310 (R)	23	7.6	6.3
Kingston & The Islands	38,217 (U)	28	8.7	7.7
Muskoka	24,759 (R)	17	5.6	4.7
*Northumberland	42,909 (M)	36	9.8	9.9
*Parry Sound	28,474 (R)	45	6.5	12.4
*Peterborough	58,901 (U)	85	13.4	23.4
*Prince Edward-Lennox	30,525 (R)	26	7.0	7.1
Quinte	44,996 (U)	29	10.3	8.0
*Renfrew North	28,248 (M)	22	6.4	6.0
Renfrew South	35,133 (R)	18	8.0	4.9
*Victoria-Haliburton	38,132 (R)	26	8.7	7.1
T O T A L S	438,644	364	100%	100%
Percentage of Total Electoral Population	8.6%			
Percentage of Total Closed Files		12.6%		

TABLE NO.: 1 (ix) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION EIGHT: OTTAWA-EAST

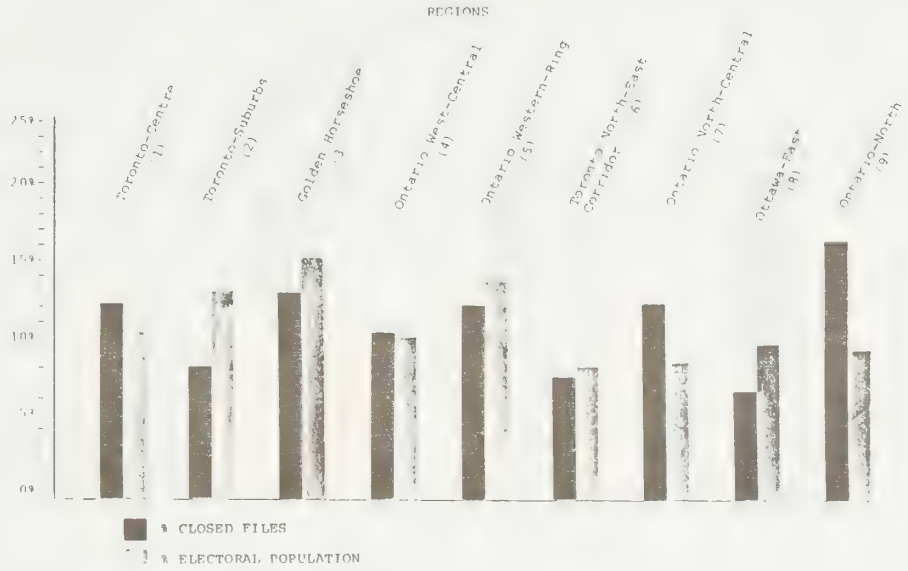
CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Carleton	50,946 (U)	10	10.0	5.1
*Carleton East	56,496 (U)	31	11.1	15.8
*Carleton-Grenville	37,263 (R)	45	7.3	23.0
*Cornwall	34,029 (U)	8	6.7	4.1
*Lanark	29,668 (M)	19	5.8	9.7
*Leeds	35,406 (M)	22	7.0	11.2
Ottawa Centre	45,324 (U)	14	8.9	7.1
Ottawa East	45,497 (U)	9	9.0	4.6
Ottawa South	50,647 (U)	9	10.0	4.6
Ottawa West	52,139 (U)	6	10.3	3.1
*Prescott & Russell	39,111 (R)	15	7.7	7.7
Stormont-Dundas-Glengarry	31,522 (R)	8	6.2	4.1
T O T A L S	508,048	196	100%	100%
Percentage of Total Electoral Population	9.9%			
Percentage of Total Closed Files		6.8%		

TABLE NO.: 1 (x) | TITLE: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION NINE: ONTARIO-NORTH

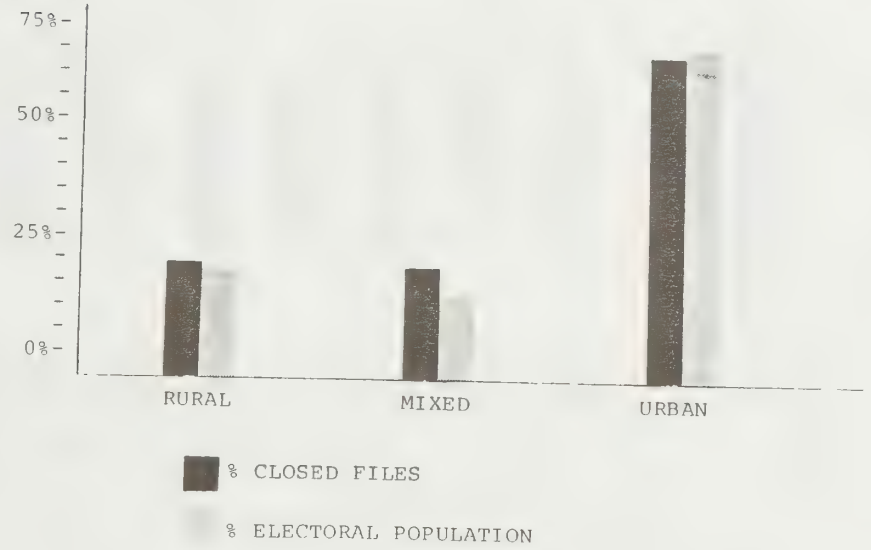
CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Algoma	18,386 (R)	22	3.8	4.7
Algoma-Manitoulin	20,212 (R)	14	4.2	3.0
Cochrane North	25,509 (R)	36	5.3	7.6
*Cochrane South	35,133 (U)	32	7.3	6.8
*Fort William	40,247 (U)	12	8.4	2.5
Kenora	28,413 (M)	41	5.9	8.7
Lake Nipigon	19,744 (R)	33	4.1	7.0
*Nickel Belt	24,359 (R)	15	5.1	3.2
Nipissing	42,247 (U)	79	8.8	16.7
*Port Arthur	39,207 (U)	19	8.2	4.0
*Rainy River	18,320 (M)	44	3.8	9.3
*Saulte Ste. Marie	50,240 (U)	42	10.5	8.9
*Sudbury	43,133 (U)	38	9.0	8.1
Sudbury East	45,527 (M)	24	9.5	5.1
*Timiskaming	28,892 (M)	21	6.0	4.4
T O T A L S	479,569	472	100%	100%
Percentage of Total Electoral Population	9.4%			
Percentage of Total Closed Files		16.3%		

TABLE NO.: 2	TITLE:	REGIONAL COMPARISON OF CLOSED FILES AND ELECTORAL POPULATION



		Closed Files	% Closed Files	% Electoral Population	% Closed Files / % Electoral Population
1	Toronto-Centre	362	12.5	10.9	1.1
2	Toronto-Suburbs	234	8.1	13.0	.6
3	Golden Horseshoe	376	13.0	15.7	.8
4	Ontario West-Central	309	10.7	10.3	1.0
5	Ontario Western-Ring	346	12.0	13.8	.9
6	Toronto North-East Corridor	229	7.9	8.5	.9
7	Ontario North-Central	364	12.6	8.6	1.5
8	Ottawa-East	196	6.8	9.9	.7
9	Ontario-North	472	16.3	9.4	1.7
	Total	2888	100%	100%	

TABLE NO.: 3	TITLE: CLOSED FILES AND ELECTORAL POPULATION BY RURAL/URBAN DESIGNATION

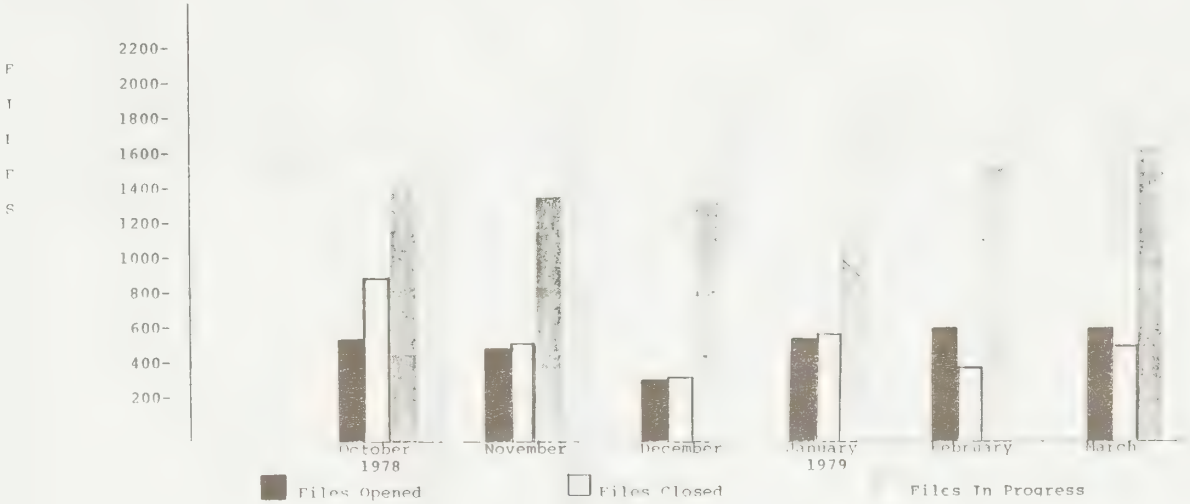


	CLOSED FILES	%CLOSED FILES	% ELECTORAL POPULATION
Rural	551	19.1	16.5
Mixed	481	16.7	12.8
Urban	1856	64.3	70.6
TOTAL	2888	100%	100%

The percentages do not include closed files where the constituency could not be determined.

TABLE NO.: 4	TITLE: FILE OPENINGS AND FILE CLOSINGS BY MONTH

FILES	To September 30, 1978	October 1978	November	December	January 1979	February	March	Total
Opened		392 (97) 489	357 (85) 442	275 (37) 312	446 (86) 532	470 (78) 548	436 (129) 565	2376 (512) 2888
Closed		814 (139) 953	366 (92) 458	254 (64) 318	450 (91) 541	321 (59) 380	387 (89) 476	2592 (534) 3126
In Progress	1858	1394	1378	1372	1363	1531	1620	1620 1914*



*The March 31, 1979 inventory of in progress files counted 1914 files.

NOTE: The figures in brackets represent additional file reopenings and file closings involving complainants who have, over time, brought a second or third new complaint to the Ombudsman.

TABLE NO.: 5	TITLE: FILE CLOSINGS BY DURATION CATEGORY



TABLE NO.: 6	TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE						
	Closing Month October 1978	November	December	January 1979	February	March	Total File Closings
Opening Month							
May 1975 to Dec. 31, 1977	334	66	28	100	9	27	564
January 1978	10	3	5	6	3	1	28
February	13	14	6	1	1	2	37
March	12	10	4	8	1	5	40
April	23	4	4	7	4	9	51
May	22	11	12	8	3	2	58
June	30	6	7	9	6	5	63
July	37	17	2	8	1	3	68
August	134	20	10	16	7	8	195
September	254	67	15	17	2	5	360
October	84	156	37	30	8	4	319
November		84	143	75	20	19	341
December			45	153	44	29	271
January 1979				103	189	71	363
February					82	228	310
March						58	58
Total File Closings	953	458	318	541	380	476	3126

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 6 (i) TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/WITHIN JURISDICTION

Opening Month	Closing Month October 1978	November	December	January 1979	February	March	Total Complaints
May 1975 to Dec. 31, 1977	137	49	37	37	8	30	298
January 1978	3	3	7	6	5	1	25
February	8	17	7	1	2	3	38
March	10	7	5	7	1	5	35
April	15	3	3	5	4	9	39
May	19	23	13	3	1	2	61
June	21	7	6	8	6	5	53
July	24	16	1	7	1	3	52
August	78	14	8	11	3	5	119
September	88	47	20	12	3	5	175
October	23	83	24	28	6	2	166
November		25	50	43	9	11	138
December			14	51	25	23	113
January 1979				22	41	50	113
February					15	55	70
March						7	7
Total Complaints	426	294	195	241	130	216	1502

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 6 (ii)	TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/OUTSIDE JURISDICTION						
	Closing Month October 1978	November	December	January 1979	February	March	Total Complaints
Opening Month							
May 1975 to Dec. 31, 1977	161	14	3	67	1		246
January 1978	6	1	1	1			9
February	4	1	3		1		9
March	1	3	1				5
April	9	1	1	1			12
May	11	3	2	1	2		19
June	9	1	1	1			12
July	17	6	1				24
August	76	7	5	4	5	2	99
September	180	30	2	3			215
October	60	99	20	11	5	1	196
November		57	99	34	7	6	203
December			25	103	22	7	157
January 1979				75	141	26	242
February					62	159	221
March						44	44
Total Complaints	534	223	164	301	246	245	1713

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 7 | **TITLE:** COMPLAINTS BY ORGANIZATION

GOVERNMENT OF ONTARIO Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Agriculture and Food	5	2	1		8
A.R.D.A.				1	1
Milk Commission of Ontario	1	1			2
Ontario Cream Producers' Marketing Board		1			1
Ontario Drainage Tribunal		1			1
Ontario Egg Producers' Marketing Board		1			1
Ontario Milk Marketing Board	1	3	1	1	6
Attorney General	19	19	4	4	46
Criminal Injuries Compensation Board	2	4	2	3	11
Ontario Municipal Board	11	16		4	31
Colleges and Universities	16	7		2	25
Colleges of Applied Arts & Technology	3	1	1	2	7
Community and Social Services	26	47	3	17	93
Centres for the Developmentally Handicapped	9				9
Training Schools	35	5		8	48
Total	70	62	3	25	150
Social Assistance Review Board	11	2		1	14
Consumer and Commercial Relations	26	12	1	5	44
Building Code Commission			1		1
Liquor Control Board	8			2	10
Liquor Licence Board		1			1
Ontario Securities Commission	1				1
Pension Commission of Ontario		1			1
Residential Premises Rent Review Board	10	4	1	1	16

TABLE NO.: 7 (i) TITLE: COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Correctional Services	15	13		13	41
Correctional Centres	256	51	1	34	342
Detention Centres	188	42		46	276
Jails	313	56	2	56	427
Community Resource Centres	4	2			6
Total	776	164	3	149	1092
Ontario Board of Parole	15	6		4	25
Culture and Recreation	6	2		3	11
Ontario Lottery Corporation	2	2		1	5
Province of Ontario Council for the Arts	3				3
Education	9	1	2	3	15
Boards of Reference	1				1
Teacher's Superannuation Commission	2				2
Energy	2			1	3
Ontario Energy Board			1		1
Ontario Hydro	16	9	3	3	31
Environment	15	6		2	23
Environmental Assessment Board	1				1
Government Services	7	2		1	10
Public Service Superannuation Board	2				2
Health	10	3		6	19
Psychiatric Hospitals	56	10		4	70
OHIP	28	11	1	3	43
Total	94	24	1	13	132

TABLE NO.: 7 (ii) **TITLE:** COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Advisory Review Board for Psychiatric Facilities	1	7		1	9
Alcoholism & Drug Addiction Research Foundation	1				1
Board of Directors of Chiropractic	1				1
Board of Directors of Masseurs	3				3
Board of Ophthalmic Dispensers		1			1
Funeral Services Review Board			1		1
Housing	14	8	2	1	25
Ontario Housing Corporation	33	14	3	9	59
Ontario Mortgage Corporation	4	2			6
Industry and Tourism	1				1
Intergovernmental Affairs	6	2	1	1	10
Labour	13	10		1	24
Ontario Human Rights Commission	4	3		1	8
Ontario Labour Relations Board	3	2			5
Workmen's Compensation Board	143	132	1	59	335
Natural Resources	33	25	8	2	68
Northern Affairs	1	1		1	3
Ontario Northland Transportation Commission	2	2		1	5
Revenue	34	71		4	109
Solicitor General	5	3	1	2	10
Ontario Police Commission	5				5
Ontario Provincial Police	2	22		1	25

TABLE NO.: 7 (iii) **TITLE:** COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Transportation and Communications	56	20	4	9	89
Ontario Highway Transport Board	1	2			3
Treasury and Economics	2	2			4
Ontario Municipal Employees Retirement Board	1	1			2
Government of Ontario Other					
Management Board					
Civil Service Commission	1	1	1		3
Public Service Grievance Board	1				1
Commission on Election Contributions & Expenses		1			1
Office of the Premier/Cabinet Office		1		1	2
Niagara Escarpment Commission		2			2
Office of the Ombudsman		3		6	9
Ontario Goverment Other				1	1
Government of Ontario Total	1506	682	47	332	2567
Courts					
Total		143		6	149

TABLE NO.: 7 (iv)	TITLE: COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES					
Canadian Penitentiary Services		13			13
Central Mortgage and Housing		3			3
Employment and Immigration		37			37
Health and Welfare		23			23
Indian Affairs and Northern Development		7		2	9
Justice				2	2
National Parole Board		10		2	12
Post Office		6			6
Public Works		1			1
Revenue Canada - Taxation		15			15
Royal Canadian Mounted Police		5		1	6
Transport		6			6
Veterans Affairs		4			4
Federal Government - Other		16		1	17
Total	—	146	—	8	154
PRIVATE					
Associations/Groups		27		2	29
Children's Aid Societies		9			9
Doctors - Patients		10			10
Hospitals		12			12
Lawyers - Clients		62		1	63
Law Society of Upper Canada		16			16
College of Physicians & Surgeons		2			2
Private Business		237		1	238
Private Individual		54		1	55
Universities - Private		7		1	8
Other - Private		43		6	49
Total	—	479	—	12	491

TABLE NO.: 7 (v)	TITLE: COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
MUNICIPALITIES/LOCAL AUTHORITIES					
Municipal Conservation Authority		1			1
Municipal Boards of Education		19			19
Municipal Fire Department		1			1
Municipal Governing Body		31			31
Municipal Housing		6			6
Municipal Hydro		3			3
Municipal Parks/Recreation		1			1
Municipal Planning Boards		7			7
Municipal Police		61	1		62
Municipal Public Health		1			1
Municipal Roads		18			18
Municipal Sewers		8			8
Municipal Taxes		13			13
Municipal Transit		1			1
Municipal Water		4		1	5
Municipal Welfare		18		1	19
Committees of Adjustment		7			7
Municipal - Other		33			33
Total		233	1	2	236
INTERNATIONAL					
Total		5			5

TABLE NO.: 7 (vi)	TITLE: COMPLAINTS BY ORGANIZATION				
	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
OTHER PROVINCES					
Total	—	15	—	—	15
NO ORGANIZATION SPECIFIED					
Total	—	10	40	1	51
OVERALL TOTAL	1506	1713	88	361	3668*

*This figure exceeds the total number of closed complaints (3664) because some complaints involve more than one organization.

TABLE NO.: 8	TITLE: OUTSIDE JURISDICTION COMPLAINTS BY REASONS

REASONS	Number of Complaints	Percentage of Complaints
Not a Governmental Organization	1	Less than 1%
Not Affected in Personal Capacity	234	13.7%
Cabinet	86	5%
Premature	374	21.8%
Judges/Courts	182	10.6%
Legal Advisor or Counsel to Crown	8	Less than 1%
Private	484	28.2%
Municipal/Local	178	10.4%
Other Provinces/Countries	20	1.1%
Federal	146	8.5%
OUTSIDE JURISDICTION COMPLAINT TOTAL	1713	100%

TABLE NO.: 9	TITLE: FINAL ACTION ANALYSIS/ ASSISTANCE TO COMPLAINANTS

ALL COMPLAINTS

Action	Number of Complaints	
Refuse to Investigate or Further Investigate	54	No Assistance 3.4%
Listen	70	
Explain	457	
Advise	249	
Refer	740	
Inquire/Refer	396	
Inquire	1646	
Suggest	36	Assistance 96.6%
Recommendation	16	
TOTAL	3664	

WITHIN JURISDICTION COMPLAINTS

Action	Number of Complaints	
Refuse to Investigate or Further Investigate	54	No Assistance 5.5%
Listen	30	
Explain	149	
Advise	27	
Refer	3	
Inquire/Refer	4	
Inquire	1183	
Suggest	36	Assistance 94.5%
Recommendation	16	
TOTAL	1502	

OUTSIDE JURISDICTION COMPLAINTS

Action	Number of Complaints	
Listen	22	No Assistance 1.3%
Explain	203	
Advise	194	
Refer	705	
Inquire/Refer	363	Assistance 98.7%
Inquire	226	
TOTAL	1713	

TABLE NO.: 10	TITLE: COMPLAINT SETTLEMENT STATUS

STATUS	NUMBER OF CLOSED COMPLAINTS
Resolved/Assisted/Favour Complainant	222
Resolved/Independent/Favour Complainant	274
Resolved/Assisted/Favour Governmental Organization	665
Total Resolved	1161
Not Resolved	2503
Total Complaints	3664

REASONS (Not Resolved)	
Abandoned	246
Withdrawn	166
No Solution Identified	21
Circumstances Changed	19
Information Requests/Submissions	361
Outside Jurisdiction	1625
Refuse to Investigate or Further Investigate	54
Recommendation Denied	11
Total Not Resolved	2503

TABLE NO.: 11	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

GOVERNMENT OF ONTARIO	Assisted		Independently
Ministries/Agencies	Favour Complainant	Favour Governmental Organization	Favour Complainant
Agriculture and Food		1	2
Milk Commission of Ontario			1
Ontario Milk Marketing Board			1
Attorney General	6	5	1
Criminal Injuries Compensation Board		1	
Ontario Municipal Board		3	
Colleges and Universities	3	3 1RD	2
Colleges of Applied Arts & Technology		2	
Community and Social Services	9	5 1RD	5
Centres for the Developmentally Handicapped		8	
Training Schools		27	3
Social Assistance Review Board	3	3	2
Consumer and Commercial Relations	4	13 1RD	1
Liquor Control Board	1	2	
Residential Premises Rent Review Board		5	
Correctional Services	5	6	3
Correctional Centres	30	120	44
Detention Centres	15	92	48
Jails	25	163	60
Community Resource Centres		2	1
Ontario Board of Parole	5	7	2

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 11 (i) | TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Independently
	Favour Complainant	Favour Governmental Organization	Favour Complainant
Culture and Recreation	2	3	1
Ontario Lottery Corporation		1	
Province of Ontario Council for the Arts		2	
Education	2	4	
Teacher's Superannuation Commission		2	
Energy			
Hydro	3	2	1
Environment	3	2	2
Environmental Assessment Board		1	
Government Services	2	2	1
Public Service Superannuation Board		1	
Health	1	2	3
OHIP	6	5 2RD	7
Psychiatric Hospitals	5	28	9
Advisory Review Board for Psychiatric Facilities		1	1
Board of Directors of Chiropractic	1		
Board of Directors of Masseurs		1	1
Housing	1	4	1
Ontario Housing Corporation	3	9	6
Ontario Mortgage Corporation	1	1	
Industry and Tourism		1	
Intergovernmental Affairs	1	2	2

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 11 (ii) | TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Independently
	Favour Complainant	Favour Governmental Organization	Favour Complainant
Labour	6	2	1
Ontario Human Rights Commission		3	
Ontario Labour Relations Board		1	
Workmen's Compensation Board	51	52 6RD	1 32
Natural Resources	2	18	5
Northern Affairs	1		
Ontario Northland Transportation Commission	2		
Revenue	6	21	1
Solicitor General	1	1	1
Ontario Police Commission	1	2	1
Ontario Provincial Police		1	
Transportation and Communications	9	21	6
Treasury and Economics		1	
Ontario Government Other			
Civil Service Commission	1		
Public Service Grievance Board		1	
Government of Ontario Total	217	666 + 11RD	259

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 11 (iii) | TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Independently
	Favour Complainant	Favour Governmental Organization	Favour Complainant
FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES			
Canadian Penitentiary Services			3
Employment and Immigration			1
Health and Welfare	1		3
Post Office			1
Total	1		8
PRIVATE			
Associations/Groups	1		
Law Society of Upper Canada	1		
Private Business	1		4
Private Individual			1
Private - Other	1		1
Total	4		6
MUNICIPALITIES/LOCAL AUTHORITIES			
Municipal Sewers			1
Municipal Welfare	1		1
Municipal - Other	1		
Total	2		2
OVERALL TOTAL	224	666 + 11[RD]	275

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 12	TITLE: STATUS AND DURATION OF IN PROGRESS FILES/OFFICE WIDE SUMMARY

IN PROGRESS STATUS CATEGORIES

1 Not assigned
2 Assigned/No action taken
3 Under review to determine jurisdiction
4 Under review to determine jurisdiction/S.C.O. pending (Section 15(5))
5 Under legal research to determine jurisdiction
6 Inquiries underway for non-jurisdictional letter
7 Non-Jurisdictional letter being prepared
8 Response to information request being prepared
9 Under investigation without Section 19(1) letter
10 Preparing Section 19(1) letter
11 Awaiting response to Section 19(1) letter
12 Preparing guidelines pursuant to Section 19(1) response
13 Not assigned/Section 19(1) response received
14 Under investigation pursuant to Section 19(1) response
15 Undergoing legal research during investigation
16 Awaiting Case Conference
17 Section 19(3) preparation/letter/response
18 Section 22(3) preparation/letter/response
19 Section 22(4) preparation/letter/response
20 Section 18 preparation/letter
21 Being prepared for closing
22 Ready to be submitted to Records for closing

99 Other

Explanation:

The number at the top of each column represents the status category most appropriate to the file.

TABLE NO.: 12 (i)	TITLE:	STATUS AND DURATION OF IN PROGRESS FILES/OFFICE WIDE SUMMARY

DIRECTORATE	STATUS CATEGORY																							Directorate TOTAL
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	99	
Special Services	-	11	8	1	-	5	7	6	6	20	4	-	202	114	1	6	37	10	2	1	17	22	-	480
Legal & Complaint Policy	109	28	28	17	32	4	13	12	9	26	24	22	12	18	19	4	15	15	2	13	60	15	34	531
General Investigations	4	5	9	4	-	-	2	4	2	3	5	5	11	171	16	24	10	1	1	1	84	6	79	447
C. A. P. S.*	96	7	1	-	-	-	5	3	73	1	2	-	-	13	1	1	3	-	2	8	181	15	7	419
Hearings & Regional Services	-	-	-	-	2	2	9	-	-	3	-	-	-	4	-	-	-	-	-	-	9	3	-	32
Queen's Park	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	1	-	-	-	1	-	-	5
OFFICE WIDE TOTAL	209 10.9%	51 2.6%	46 2.4%	22 1.1%	34 1.7%	11 .6%	36 1.9%	25 1.3%	90 4.7%	53 2.8%	35 1.8%	27 1.4%	225 11.8%	320 16.7%	37 1.9%	38 2.0%	66 3.4%	26 1.3%	7 .3%	23 1.2%	352 18.4%	61 3.2%	120 6.3%	1914 100%
AVERAGE IN PROGRESS DURATION (DAYS)	34	50	165	586	117	88	68	143	81	114	131	304	173	422	564	500	542	620	693	372	274	330	680	285

*Correctional & Psychiatric Services

TABLE NO.: 13 | TITLE: COMPLAINT DISPOSITION SUMMARY

NUMBER OF FILE OPENINGS/CLOSINGS	
OPENED	2888*
CLOSED	3126
IN PROGRESS	1914

JURISDICTION	NUMBER OF COMPLAINTS
WITHIN	1502
OUTSIDE	1713
NOT DETERMINED	88
INFORMATION REQUESTS/SUBMISSIONS	361
	3664

FINAL ACTION	
LISTEN	70
EXPLAIN	457
ADVISE	249
REFER	740
INQUIRE/REFER	396
INQUIRE	1646
SUGGEST	36
RECOMMENDATION	16
REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE	54
	3664

*This figure includes 512 files that were reopened.

SETTLEMFNT	NUMBER OF COMPLAINTS
STATUS:	
RESOLVED/ASSISTED	887
RESOLVED/INDEPENDENT	274
TOTAL RESOLVED	1161
FINDINGS:	
SUPPORTED	57
NOT SUPPORTED	667
NOT RESOLVED:	2503
REASONS:	
ABANDONDED	246
WITHDRAWN	166
NO SOLUTION IDENTIFIED	21
CIRCUMSTANCES CHANGED	19
INFORMATION REQUESTS/SUBMISSIONS	361
OUTSIDE JURISDICTION	1625
REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE	54
RECOMMENDATION DENIED	11
	2503
RESULTS: (ONLY RESOLVED COMPLAINTS)	
FAVOUR COMPLAINANT	496
FAVOUR "GOVERNMENTAL ORGANIZATION"	665
	1161

TABLE NO.: 14	TITLE: DEFINITION OF TERMS

GENERAL

The definitions under the heading "Complaint Disposition" provide the basis for the disposition analysis of all files closed by the Office of the Ombudsman during a reporting period. A detailed analysis using these definitions is not carried out for no follow-up complaints and no follow-up information requests where a file was not set up.

COMPLAINT DISPOSITION

"DURATION"

The number of calendar days from the date the complaint is received to the date on which the file is closed.

"JURISDICTION"

A determination of whether the Ombudsman is empowered to investigate a complaint. The jurisdictional determination is based on an evaluation of the complaint in the context of the provisions of The Ombudsman Act, 1975, in particular, Section 15(1) which requires that a complaint be directed against a "governmental organization" as defined in Section 1(a) of the Act. Other sections of the Act specifically limit the Ombudsman's jurisdiction to investigate complaints. These other reasons are listed in this chapter under the heading "JURISDICTION".

"FINAL ACTION"

The extent of the action taken on a complaint as determined at the time of the closing of a file. The final action possibilities are:

"Listen"
"Explain"
"Advise"
"Refer"
"Inquire/Refer"
"Inquire"
"Suggest"
"Recommendation"
"Refuse to Investigate
or Further Investigate"

"LISTEN"

The extent of the action taken when a complaint is received and no further action is possible, such as when a complaint is abandoned or withdrawn.

TABLE NO.: 14 (i)	TITLE: DEFINITION OF TERMS

"EXPLAIN"

The extent of the action taken when a complainant is offered an explanation of his or her circumstances.

"ADVISE"

The extent of the action taken when a complainant is offered general advice concerning his or her problem.

"REFER"

The extent of the action taken when the complainant is directed to a specific organization.

"INQUIRE/REFER"

The extent of the action taken when the complainant is directed to a specific organization as the result of contacts between the Ombudsman's staff and the staff of the organization to which the referral is made.

"INQUIRE"

The extent of the action taken when contacts are made on behalf of the complainant, but there is not a referral nor a suggestion or recommendation. All inquiries include either advice or an explanation.

"SUGGEST"

The extent of the action taken when an inquiry results in a proposed course of action for resolving the problem. A "Suggest" action may involve organizations which are not "governmental organizations" within the meaning of The Ombudsman Act, 1975.

"RECOMMENDATION"

The extent of the action taken when, pursuant to Section 22(3) of The Ombudsman Act, 1975, an investigation results in a recommendation to a "governmental organization".

TABLE NO.: 14 (ii)	TITLE: DEFINITION OF TERMS

"REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE"

The extent of the action taken when the Ombudsman decides not to investigate or further investigate a complaint. This action category applies only to complaints within the jurisdiction of the Ombudsman.

"SETTLEMENT"

A set of determinations which describe the finalization of a complaint in terms of the following considerations:

(i) Was the complaint resolved?

(ii) For those complaints that were resolved:

(a) Was the complaint resolved as a result of the Ombudsman's assistance or was the complaint independently resolved?

(b) Was there a finding that the complaint was supported or not supported?

(c) Was the complaint resolved in favour of the complainant or was the complaint resolved in favour of the "governmental organization"?

"SETTLEMENT STATUS"

A determination of whether a complaint was resolved.

"FINDING"

A decision by the Ombudsman that the complainant's contentions were founded or unfounded. The former are designated as "Supported" complaints, and the latter are designated as "Not Supported" complaints.

"RESOLVED COMPLAINT"

A complaint which culminates in a settlement result which favours either the complainant or the organization complained against. All resolved complaints include a determination of whether the complaint was resolved with the assistance of the Ombudsman or independently.

TABLE NO.: 14 (iii)	TITLE: DEFINITIONS OF TERMS

"NOT RESOLVED COMPLAINT"

A complaint which does not culminate in a settlement result for one of the following reasons:

(a) The complaint was abandoned.

(b) The complaint was withdrawn.

(c) An appropriate solution could not be identified.

(d) The relevant circumstances changed in the course of an investigation.

(e) The complaint constituted a request for information.

(f) The complaint was outside the jurisdiction of the Ombudsman.

(g) The Ombudsman refused to investigate or further investigate.

(h) The recommendation of the Ombudsman pursuant to Section 22(3) of The Ombudsman Act, 1975, was denied by officials of the "governmental organization".

"SETTLEMENT RESULT"

A determination of whether the complaint was resolved in favour of the complainant or the "governmental organization" complained against.

APPENDIX D

STATEMENT ISSUED BY THE WORKMEN'S COMPENSATION BOARD ON DECEMBER 15, 1978 REGARDING ITS POLICY ON EXTENDING "BENEFIT OF REASONABLE DOUBT"

BENEFIT OF REASONABLE DOUBT

The "Benefit of Reasonable Doubt" principle is applied to all levels of decision-making at the Board.

The benefit of reasonable doubt is not applied as a substitute for evidence in that there must be some evidence to support the claim before the benefit of reasonable doubt is applied.

The Board interprets the principle as meaning that it is not necessary to adduce conclusive proof in support of a claim for compensation. The Board, when adjudicating entitlement, will draw from all the circumstances of the case, from the evidence adduced, and from the medical opinions, all reasonable inferences and presumptions in favour of recognizing entitlement.

When applied to an injured employee, the effect is that the employee does not require a preponderance of evidence in support of his claim, so long as reasonable inferences, based on the balance of probabilities and not mere possibilities, can be drawn in his favour.

APPROVED BY THE BOARD

this 15 day of Dec 1978

.....

APPENDIX E

OMBUDSMAN BROCHURE

Can your Ontario Ombudsman help you?

In the course of running any government, there are bound to be times when some citizens feel they have been treated unfairly.

Their complaints may arise through some action that has been taken (or neglected) by a civil servant or by some branch or ministry or some other government body. Or a complaint may stem from some decision or recommendation made in the name of the government or one of its agencies, boards or commissions.

Some people's complaints are based on simple misunderstandings of government procedures or individual rights. Other cases arise from serious injustices that should be remedied.

Whatever the cause, people's complaints deserve consideration.

In Ontario, complaints about the Provincial government may be investigated by the Ombudsman.

L'Ombudsman de l'Ontario, peut~il vous aider?

Au cours de l'administration de tout gouvernement, il arrive parfois que certains citoyens aient le sentiment d'avoir été traités d'une façon injuste.

Leurs plaintes peuvent survenir suite à des actions qui ont été prises (ou négligées) par un fonctionnaire du gouvernement, une direction, un ministère ou organisme gouvernemental. Une plainte peut également résulter d'une décision ou recommandation faite au nom du gouvernement, d'une de ses agences, régies ou commissions.

Certaines plaintes portées par le public sont basées sur de mauvaises interprétations des procédures gouvernementales ou droits de l'individu. D'autres cas traitent de sérieuses injustices, qui devraient être corrigées.

Quelle qu'en soit la cause, les plaintes portées par le public méritent d'être considérées.

Dans la province de l'Ontario, l'Ombudsman peut faire enquête sur les plaintes concernant le gouvernement provincial.



The Honourable Donald R. Morand, formerly Justice of the Supreme Court of Ontario for 18-1/2 years, was appointed Ombudsman of Ontario in January, 1979. Mr. Morand was Chairman of the Royal Commission on Metropolitan Toronto Police Practices in 1976 and was instrumental in establishing the Family Law Branch of the Supreme Court of Ontario the same year.

"Ombudsman", a Swedish word of long and honourable tradition, means a protector or defender of citizens' rights.

Ontario has had an Ombudsman since 1975. That was the year the Legislature passed The Ombudsman Act, which, among other things, guarantees that the Ombudsman can perform his duties independently of the government. This Act makes the Ombudsman accountable directly to the Legislature.

Unlike most other public officials, the Ombudsman cannot be appointed without the approval of the Legislature, which also receives formal reports from him on his work, at least once a year, through the Speaker. These reports are reviewed by an all-party committee of the Legislature known as the Select Committee on the Ombudsman.

The Ombudsman / Ontario



L'Honorable Donald R. Morand, ancien juge à la Cour suprême de l'Ontario pendant 18-1/2 ans, a été nommé Ombudsman de l'Ontario en janvier 1979. M. Morand fut Président de la Commission royale d'enquête sur les pratiques de la Police de Toronto métropolitain (Metropolitan Toronto Police Practices) en 1976 et, la même année, contribua à l'établissement de la Direction du droit familial de la Cour suprême de l'Ontario.

Le terme "Ombudsman", de provenance suédoise et de longue et honorable tradition, signifie protecteur ou défenseur des droits des citoyens.

L'Ombudsman en Ontario existe depuis 1975. Cette année, l'Assemblée législative a adopté la Loi sur l'Ombudsman qui garantit, entre autres, que l'Ombudsman accomplira ses fonctions indépendamment du gouvernement. Par cette loi, l'Ombudsman rend compte de ses actes directement devant l'Assemblée législative.

A la différence de la plupart des autres agents publics, l'Ombudsman ne peut être nommé sans l'approbation de l'Assemblée législative. Au moins une fois par année, l'Ombudsman lui adresse, par l'intermédiaire du Président de l'Assemblée, des rapports précis concernant ses actions. Ces rapports sont alors examinés par un comité de l'Assemblée, connu sous le nom de Comité d'enquête sur l'Ombudsman, et composé de membres de tous les partis politiques.

L'Ombudsman / Ontario

Q What can the Ombudsman do about my complaint?

Under the power given him by the Legislature, the Ombudsman and his staff can investigate your complaint thoroughly; and since he is independent of the government of the day, he is in a position to gather and weigh all the relevant facts impartially.

Will I be told the results of the investigation?

Certainly. If the Ombudsman undertakes an investigation of your complaint, he must let you know what happens to it.

Q Can the Ombudsman order the government to remedy a bad situation?

No, but if a government ministry ignores one of his recommendations, he can take the matter to the Premier and, if necessary, to the Legislature, where it could become a public issue. He can use a lot of persuasion in the right places.

Are there some kinds of problems the Ombudsman cannot deal with?

Yes. Being an Ontario official, the Ombudsman cannot deal with federal matters (such as postal service or unemployment insurance cheques) or local government concerns (such as garbage collection or by-law enforcement).

The Ombudsman cannot take up cases against private individuals or companies (such as domestic disputes or a problem with the manufacturer of a faulty product).

Some provincial matters, too, are beyond his scope — courts, judges, Cabinet decisions, and actions taken by the government's legal advisors.

Q Quelles actions l'Ombudsman peut-il intenter concernant ma plainte?

De par le pouvoir conféré par l'Assemblée, l'Ombudsman ainsi que son personnel peuvent faire une enquête approfondie au niveau de votre plainte; et du fait qu'il est indépendant du gouvernement actuel, il est en mesure, d'une manière impartiale, d'assembler et peser tous les faits pertinents à votre plainte.

Q Les résultats de l'enquête me seront-ils communiqués?

Absolument. A partir du moment où l'Ombudsman entreprend une enquête sur votre plainte, il se doit de vous informer des développements s'y rattachant.

Q L'Ombudsman est-il en mesure d'ordonner le gouvernement de remédier à une mauvaise situation?

Non, mais dans le cas où un ministère gouvernemental n'accepterait pas une de ses recommandations, il peut porter le cas à l'attention du Premier ministre et, si nécessaire, devant l'Assemblée, dans quel cas cela pourrait devenir une affaire publique. Il peut faire usage d'une grande persuasion parmi les milieux concernés.

Q Existe-il certaines catégories de problèmes que l'Ombudsman ne peut traiter?

Oui. L'Ombudsman, en tant que fonctionnaire ontarien, ne peut s'occuper des cas fédéraux (tels que services postaux ou chèques d'assurance chômage) ou encore au niveau du gouvernement local (tels que ramassage des ordures ménagères ou application de règlements municipaux).

L'Ombudsman n'a pas la possibilité d'intervenir dans des cas contre des individus ou des compagnies privées (tels que conflits de ménage ou problèmes avec le fabricant d'un produit défectueux).

Certaines affaires provinciales sont également hors de sa compétence — tribunaux, juges, décisions du Cabinet et actions prises par les conseillers juridiques du gouvernement.

Even so, the Ombudsman's work encompasses a wide range of concerns, such as workmen's compensation, OHIP, expropriation of land for provincial highways, family benefits, retail sales tax, and many, many others.

If you have an unresolved complaint and aren't sure whether it falls within the Ontario Ombudsman's scope of duties, it's a good idea to inquire anyway. Someone on the Ombudsman's staff will tell you whether he can be of service in your case.

Q At what stage should I take my complaint to the Ombudsman?

It's best to think of the Ombudsman as a last resort — the person who tries to help you after all other approaches have failed. With any complaint against the Ontario government, your first step should be to go right to the person or group involved — the ministry, commission, board or whatever. If that doesn't produce a satisfactory result, take your complaint to the head of the organization.

If that step also fails, see whether your MPP can help you. (That's part of his or her job as your elected representative.)

Also, for some situations (land severance, certain tax matters, for instance, or racial discrimination) there are special boards or systems or procedures set up especially to enable people to appeal against or object to actions they believe are wrong.

You should try all these steps and stages, as necessary, before approaching the Ombudsman. Only when you have tried all statutory avenues for complaint, appeal or objection, or only when the stipulated time for appeals and objections has run out, can the Ombudsman investigate your complaint.

De même, la fonction de l'Ombudsman englobe un champ très étendu de domaines, par exemple les accidents du travail, OHIP, expropriation des terres aux fins de construction d'autoroutes provinciales, assistance familiale, taxe de vente au détail et nombre d'autres.

Dans le cas où vous auriez une plainte irrésolue et que vous ne seriez pas certain si celle-ci tombe ou pas sous la juridiction de l'Ombudsman, il serait bon, de toutes façons, de s'enquérir à ce sujet. Un des membres du personnel de l'Ombudsman sera en mesure de vous informer si l'Ombudsman peut vous prêter assistance.

Q A quelle étape pourrais-je porter ma plainte à l'attention de l'Ombudsman?

Il est préférable de considérer l'Ombudsman en tant qu'organisme à contacter en "dernier ressort" — celui qui met tous ses efforts à votre service une fois que toutes les autres actions entreprises ont échoué. Pour toute plainte portée contre le gouvernement provincial, vous pourriez, comme première étape, entrer en contact avec la personne ou le groupe impliqué — le ministère, la commission, la régie ou autres.

Et si cette démarche n'apporte pas de résultats satisfaisants, votre plainte devrait être portée à l'attention de la haute direction de l'organisme concerné.

Dans le cas où cette démarche s'avèrerait également infructueuse, veuillez contacter votre député, lequel pourrait prendre des mesures pour vous aider (c'est une de ses responsabilités en tant que votre représentant élu).

De même, pour certaines situations (morcellement de terrains, certains problèmes d'impôt ou de discrimination raciale), il existe des régies, procédures ou systèmes spéciaux qui sont créés particulièrement afin de permettre au public de faire objection ou interjeter appel contre des actions qu'il estime prises à tort.

Tous ces échelons et étapes, le cas écheant, devraient être suivis avant de contacter l'Ombudsman. L'Ombudsman pourra faire enquête sur votre plainte seulement après que vous ayez essayé toutes les avenues statutaires dans le cadre de votre plainte, appel ou objection, ou seulement après que le temps imparti pour les appels et objections ait expiré.

Q How do I make my complaint to the Ombudsman?

You may file a complaint by telephoning, writing a letter or visiting the Ombudsman's office. The addresses and telephone numbers for the Ombudsman are provided on the last page of this booklet and the main office is listed in your telephone book.

Members of the Ombudsman's staff also travel frequently to other cities and towns in Ontario, to receive complaints and to speak publicly to various organizations. To find out when a member of the Ombudsman's staff will be visiting your area, please telephone or write to the Ombudsman's office.

If you wish to file your complaint by long-distance telephone, please bear in mind that collect calls cannot be accepted, but you can avoid costly charges by calling just long enough to leave your name, address and telephone number, so that a staff member can get in touch with you promptly for more details.

Whatever means you choose for lodging a complaint, you can rest assured that it will be received in confidence, as a private matter between you and the Ombudsman.

The Ombudsman's office is open from 9 a.m. to 5 p.m., Mondays through Fridays, but you can telephone at any hour and leave a message. A staff member will contact you as soon as possible.

Q Quelles procédures dois-je suivre pour porter ma plainte à l'attention de l'Ombudsman?

Vous pouvez enregistrer votre plainte en téléphonant au Bureau de l'Ombudsman, en lui adressant une lettre ou en vous rendant à ses locaux.

Les adresses et numéros de téléphone pour rejoindre l'Ombudsman sont indiqués sur la dernière page de cette brochure et ceux du Bureau principal sont inscrits dans l'annuaire téléphonique.

Des membres du personnel de l'Ombudsman, également,voyagent fréquemment dans les autres centres de la province de l'Ontario, dans le but de recevoir des plaintes et faire des discours publics au niveau de diverses organisations.

Pour toutes informations concernant les visites à venir du personnel de l'Ombudsman dans votre région, vous pouvez contacter le Bureau de l'Ombudsman par téléphone ou par écrit.

Si vous désirez enregistrer votre plainte par téléphone longue distance, il serait bon que vous gardiez à l'esprit le fait que les appels téléphoniques à frais virés ne peuvent être acceptés. Par contre, vous pourrez éviter des coûts téléphoniques onéreux en appelant suffisamment longtemps pour donner votre nom, adresse et numéro de téléphone, et ainsi permettre à un des membres du personnel de vous rappeler rapidement pour plus de détails.

Quels que soient les moyens que vous choisissiez en vue de soumettre votre plainte à l'attention de l'Ombudsman, vous pouvez être assuré qu'elle sera traitée confidentiellement, comme une affaire privée entre vous et l'Ombudsman.

Le Bureau de l'Ombudsman est ouvert de 9h.00 à 17h.00, du lundi au vendredi, mais vous pouvez téléphoner à n'importe quelle heure et laisser un message. Un membre du personnel vous contactera dès que possible.

Q What if I am unable to speak or write adequately in English or French?

Please make your complaint in whatever language is most comfortable for you. The Ombudsman's staff can speak a total of 18 languages besides English and French, and, if necessary, someone will arrange an interpreter for you.

Q Que puis-je faire s'il m'est impossible de parler ou d'écrire adéquatement en anglais ou en français?

Veuillez enregistrer votre plainte en utilisant la langue dans laquelle vous vous sentez le plus à l'aise. Le personnel de l'Ombudsman peut parler un total de 18 langues, sans compter l'anglais et le français et, si nécessaire, une personne du Bureau vous pourvoira les services d'un interprète.

Q What about inmates in provincial correctional institutions or patients in psychiatric facilities?

Any letter addressed to the Ombudsman from any such person must be forwarded immediately, *unopened.* His replies are also delivered unopened.

Q Will I be charged a fee for having my complaint investigated?

No. Regardless of the outcome, there is no fee.



Write, telephone, or visit:

Office of the Ombudsman,
6th Floor, 65 Queen Street West,
Toronto, Ontario M5H 2M5. (416) 869-4000

or
2nd Floor, 1265 East Arthur Street,
Thunder Bay, Ontario P7E 6E7
(807) 623-5058

or at the Legislature, apply to:

Room 157, Main Legislative Building,
Queen's Park, Toronto.
Telephone: 965-7930 or 869-4163.

Q Qu'en est-il au niveau des détenus dans les établissements correctionnels provinciaux ou des patients dans les établissements psychiatriques?

Toute lettre adressée à l'Ombudsman par une personne d'un tel établissement doit être transmise immédiatement *sans être ouverte.* Les réponses de l'Ombudsman sont également délivrées sans être ouvertes.

Q Aurai-je à payer des frais pour que ma plainte fasse l'objet d'une enquête?

Non. Quelle que soit l'issue de votre plainte, il n'y a aucun frais à verser.



Veuillez écrire, téléphoner ou vous rendre à l'endroit suivant:

Bureau de l'Ombudsman,
6ème étage, 65 rue Queen quest,
Toronto, Ontario M5H 2M5. (416) 869-4000

ou
2 ème étage, 1265 rue Arthur est
Thunder Bay, Ontario P7E 6E7
(807) 623-5058

ou à l'Assemblée législative, vous adresser à:

Bureau 157, Edifice principal, Assemblée législative,
Queen's Park, Toronto, Ontario.
Téléphone: 965-7930 ou 869-4163.

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SEVENTH REPORT

The Ombudsman | Ontario

APRIL 1979 — MARCH 1980



SEVENTH REPORT

The Ombudsman | Ontario

APRIL 1, 1979 — MARCH 31, 1980



HON. DONALD R. MORAND

The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

May 22nd, 1980

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is with pleasure that I present the Seventh Report of the Ombudsman for the period April 1, 1979 to March 31, 1980.

This report is submitted pursuant to Section 12 of The Ombudsman Act, 1975.

Yours very truly,

Donald R. Morand

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CHAPTER ONE

INTRODUCTION

I am pleased to present the Seventh Report of the Ombudsman which is also the second Report in my capacity as Ombudsman of the Province of Ontario. This is my first yearly Report and as such covers the period of time from April 1, 1979 to March 31, 1980.

As I indicated in my first Report I have reduced the number of detailed summaries while still maintaining a comprehensive account of the Office and I have included those cases in which our recommendations have been denied.

I have also decided to abbreviate the statistics section for this and for future Reports. This Report includes several pages of narrative under the heading "Complaint Statistics" and two tables which show i) the complaints by organization and ii) the complaint disposition summary. Statistics contained in previous Reports are available in our computer system and can be easily retrieved.

COMPLAINT STATISTICS

Since the inception of the Office of the Ombudsman in May of 1975, until the cut-off date of this Report, March 31, 1980, the Office received complaints for which a total of 28,848 files were opened. A total of 26,162 files were closed since May of 1975; 9,468 (36%) of these files involved complaints which were within the jurisdiction of the Office of the Ombudsman to investigate. During this period, the Office also dealt with 31,597 non-jurisdictional complaints and information requests for which no follow-up action was required and for which a file was not opened. Therefore, the total of complaints and information requests received in our Office since May of 1975 was some 60,445.

During the 1979/80 Fiscal Year period covered by this Seventh Report, April 1, 1979 to March 31, 1980, we opened 5,475 files. In addition, the Office dealt with 5,097 no follow-up complaints and information requests, in the course of interviewing complainants, for which a file was not opened. Therefore, on an overall annual basis the Office received 10,572 new complaints and information requests. A total of 4,655 files were closed in this period. There were 5,439 complaints and information requests associated with the closing of these files.

These 5,439 cases incorporate 4,729 complaints for which the jurisdiction of the Office was determined. Approximately 50% or 2,354 of these complaints were found to be within the jurisdiction of the Ombudsman. The remaining 2,375 complaints were found to be outside the jurisdiction of the Ombudsman.

Overall, 1,610 (1,541 jurisdictional complaints) complaints dealt with during this reporting period were resolved. The preponderance of these complaints, 1,553 (96%), coincide with situations where the Office was directly involved. The remaining 57 complaints were resolved independently of any involvement on our part. Of the 1,610 complaints, 613 were resolved in favour of the complainant. The involvement of our Office and the cooperation of the officials of the various ministries and agencies of the Province were the two most important factors contributing to the resolution of these cases. On the other hand, the balance or 997 complaints were resolved in favour of the "governmental organization". In these cases the involvement of our Office culminated in a decision by the Ombudsman that he was unable to support the complaint pursuant to the provisions of Section 22(1) of The Ombudsman Act, 1975.

With the exception of the 169 complaints where the Ombudsman decided to "refuse to investigate or further investigate", the 3,829 complaints which were not resolved involved factors which precluded a complaint resolution. These unresolved complaints were outside the jurisdiction of the Ombudsman, abandoned or withdrawn. The unresolved complaints also include the 13 complaints associated with 9 file closings wherein the Ombudsman supported the complainant's allegation, but the recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975 was not accepted by the officials of the "governmental organization".

As noted in previous reports, our Office will continue to make every reasonable effort to assist those citizens who come to the Ombudsman with problems that do not fall within the Ombudsman's jurisdiction. For this report period our Office was able to be of assistance in 98% of the 2,375 non-jurisdictional complaints that warranted the opening of a file. The complainants received a letter from our Office which provided either a specific referral to an appropriate agency or a clarifying explanation of the complainant's circumstances. The complainants who were involved with the 5,097 no follow-up complaints and information requests for which we did not open a file were provided with a referral or an explanation of their situation in the course of their interview with our staff. These no follow-up complaints and information requests were received and handled through our interview services by means of office interviews (297), telephone interviews (3,932), and hearing interviews (868). The large number of complaints received in the course of interviews continues to support our view that citizens perceive this Office as one which they can approach on a very personal and individual basis, either by meeting with members of our staff in the course of a private hearing or by contacting the Office in person or by telephone.

Once again, Northern Ontario had the highest complaint-to-population ratio, as well as the single largest volume of complaints from our nine regions. The Ontario-North Region accounted for 18% (773) of all complaints where a geographical determination could be made.

STATISTICAL HIGHLIGHTS

The following table highlights some of the statistics contained in this Report:

FILES:		COMPLAINTS:	NO FOLLOW-UP COMPLAINTS AND INFORMATION REQUESTS: 5,097*
OPENED	5,475*	5,439	
CLOSED	4,655		

BY JURISDICTION		BY ORGANIZATION	
2,354	within jurisdiction	3,925	involved Ontario Government ministries or agencies
608	information requests	699	involved private agencies, firms or individuals
102	jurisdiction undetermined	309	involved municipalities or local police forces
2,375	outside jurisdiction	248	involved Federal Government departments or agencies
		206	involved courts
		56	involved international, other provinces or unspecified
5,439**	Complaints	5,443***	Complaints

*Overall the Office received 10,572 new complaints and information requests.

** Some files involved more than one complaint

*** Some complaints involved more than one organization

REGIONAL OFFICES

Since the opening of the Thunder Bay Regional Office on June 15, 1979, more than 600 complaints have been received by this location. In addition, the staff of this Office have completed 10 road trips to 40 towns, settlements and Indian Reserves in the vicinity interviewing a total of 224 formal complainants. To date this Office has proved to be entirely successful.

On April 10, 1980 I opened our second Regional Office in the city of North Bay to service the northeastern area of the Province. This Office is managed by Gilles Morin, the Director of Regional Services. He will be assisted by a legal officer and a secretary. Again the manning of this office has been achieved with no increase to our staff complement.

PRIVATE HEARINGS

In keeping with the Office's commitment to continue Private Hearings throughout the Province, I am pleased to report that during the period covered by this Seventh Report, the Office of the Ombudsman held Private Hearings in the following 30 communities:

Date		Location	No. of Complaints Received	No. of Interviews Conducted
1979				
April	3	Kirkland Lake	43	39
	4	Cochrane	24	21
	4	Timmins	79	67
May	1	St. Thomas	46	43
	2	London	64	59
	3	Stratford	44	39
	29	Cornwall	32	28
	30	Brockville	49	48
	31	Ottawa	49	45
Sept.	18	Sault Ste Marie	86	84
	19	Wawa	18	17
	20	Chapleau	12	10
Oct.	16	Kitchener	59	54
	17	Brantford	52	50
	18	Simcoe	53	51
Nov.	14	Sudbury	65	63
	15	Sturgeon Falls	26	25
	16	North Bay	56	53
Dec.	11	Kingston	53	49
	12	Belleville	44	40
	13	Bancroft	31	29

Date		Location	No. of Complaints Received	No.of Interviews Conducted
1980				
Jan.	8	Timmins	69	67
	9	Hearst	22	22
	10	Kapuskasing	29	28
Feb.	5	Hamilton	109	101
	6	St. Catharines	74	69
	7	Port Colborne	54	52
Mar.	4	Windsor	78	76
	5	Chatham	61	59
	6	Sarnia	34	33
			1,515	1,421

Sarnia, the last municipality visited during this reporting period, represented the 156th time members of our staff conducted Private Hearings.

With the opening of our second Regional Office it is anticipated that future hearings in the Northern Ontario areas will be conducted by staff members from these offices and supplemented by staff from the Toronto Office when necessary.

VISITS TO INDIAN RESERVES AND SETTLEMENTS

Again, members of the staff from the Regional Services Directorate were able to undertake visits to the Indian Reserves and Settlements in Ontario, in order to offer the services of the Ombudsman to our Native population.

During the past twelve months, the majority of the bands visited were located in Northwestern Ontario. In some cases visits represented the first contact with a band on its own reserve, but a good many were repeat calls. Due to the isolation of many settlements from the closest non-Indian community, it is necessary for our staff representatives to fly in to these locations. Without such personal contact, the majority of our Indian residents would never know of the role of the Ombudsman and would then never have the opportunity to express their problems.

Date		Location
1979		
July	16	Six Nations
Aug.	14	Fort Severn
(week of)		Kasabonika
		Angling Lake
		Big Trout Lake
		Bearskin Lake
		Sachigo Lake
		Muskrat Dam
		Wunnumin Lake
		Kingfisher Lake
Aug.	21	Cat Lake
(week of)		Weagamow
		Sandy Lake
		North Spirit Lake
		Deer Lake
		Poplar Hill
		Pikangikum
		Lac Seul
Oct.	11	Osnaburgh House
Oct.	29	Seine River
Oct.	30	Nickicousemenecaning
Oct.	30	Stangecoming
Oct.	30	Naicatchewenin
Oct.	31	Manitou Rapids
Nov.	1	Big Grassy
Nov.	19	Pic Heron
Nov.	20	Pic Mobert

THE CORRECTIONAL REPORT

In our Sixth Report to the Legislature, we stated that our Office had not received the Ministry of Correctional Services' response to former Ombudsman Arthur Maloney's letter dated August 8, 1978 to the former Minister, the Honourable Frank Drea. Our Office was informed that a response was being prepared and would be forwarded to the present Ombudsman in the immediate future.

On July 17, 1979, we were in receipt of a reply from the Minister, the Honourable Gordon Walker, who set forth his actions in relation to the recommendations which have been implemented by his Ministry and certain other recommendations which are either in the process of being implemented or that cannot be implemented because of financial constraints. There are very few areas where the Minister has expressed his reservations to carry out specific recommendations.

Since July 17, 1979, I and my staff have either visited or contacted all of the institutions in question. To date my staff has devoted much time and effort to this investigation and I anticipate that it will be brought to completion in the near future.

OMBUDSMAN FILM

Ten prints of our film are presently being distributed throughout the province by a film distribution company. Telecasts via television have reached an estimated total viewing audience of over 500,000 in the last six months with special concentration on community cable television companies. These showings are used as advance notice of the forthcoming hearings in the local area.

Informal audience testings were conducted by means of questionnaires and feedback has been generally positive. The most often used comment has been to the effect that, after seeing the film, viewers have a better understanding of what the Ombudsman can and cannot do.

OMBUDSMAN BROCHURE

Our brochure has now gone into second printing with a combined distribution of 300,000. Major distributions were done as follows:

Supermarket Information Centre Network (328 locations)	38,750
L.C.B.O. Stores (580)	20,525
Licence Issuing Offices (314)	38,200
Information outlets at hearings	40,000

A further 50,000 were distributed through the offices of all ministries and agencies of the government. The brochure has also been made available in public areas such as hospitals, Province of Ontario Savings Offices and constituency offices.

The brochure was also translated in the Cree and Ojibway languages and these are currently being distributed.

COURT CASES

In my Sixth Report, I included a reference to two cases (then before the courts) dealing with the Ontario Ombudsman's jurisdiction. The proceedings in one of those cases have been concluded, while the other, also decided in the Ombudsman's favour, has been appealed to the Court of Appeal.

a. Health Disciplines Board

In my last report, I made reference to the Appeal by both the Attorney General and the Health Disciplines Board from the judgement of the Honourable Mr. Justice Labrosse, given December 13th, 1978. Although the Appeal had been argued before my last report was tabled, judgement was reserved.

On July 31st, 1979, the 37 page judgement of the Court of Appeal was released. The Court in an unanimous decision written by Mr. Justice Morden dismissed the Appeal holding that Mr. Justice Labrosse was correct in answering the following two questions in the affirmative:

(1) Is the Health Disciplines Board of the Province of Ontario a governmental organization of the Province of Ontario within the meaning of The Ombudsman Act, 1975?

(2) Does the Ombudsman have jurisdiction pursuant to section 15(1) of The Ombudsman Act, 1975, to investigate the review and decision made by the Health Disciplines Board of Ontario in respect of the case in issue and other cases within the same class?

The reasons for judgement are particularly helpful, since the Court of Appeal has interpreted some of the principal sections and terms in The Ombudsman Act, for example: "board or other administrative unit of the Government of Ontario," in s. 1(a), "court" in s. 14(a) and 15(4)(a), and "in the course of the administration..." in s. 15(1) of the Act. The guidelines given then will be of assistance to both the government and my office should similar questions of jurisdiction arise in the future.

At the first convenient time following the expiry of the time within which leave could have been sought to appeal to the Supreme Court of Canada, I met with the Chairman of the Health Disciplines Board, Mr. Edward Pickering and Board Counsel, Russell Fraser, Q.C. My reason for seeking the meeting was to personally advise the Board that all complaints to my office against the Board that had been held in abeyance would be activated, and to arrive at a modus operandi for my office's investigation of the complaints, satisfactory to both the Board and to me.

b. North Pickering Court Application

In the Ombudsman's Fifth and Sixth Reports, reference was made to the Court Application brought by the Ombudsman concerning certain North Pickering cases. This Application was heard by the Chief Justice of the High Court on August 8th and 9th, and September 12th, 1979, and the 32 page Judgement was released on October 12th, 1979.

The Chief Justice determined that the Ombudsman does have the jurisdiction to further investigate complaints, notwithstanding that he has already delivered a

report pursuant to s. 22 of The Ombudsman Act, regarding the subject matter of the complaint, and more particularly in respect of the complaint of some of the former landowners as described in a written agreement between the Minister of Housing and the Ombudsman made October 1, 1976. The application with respect to the second ground of relief claimed was dismissed on the basis that the question as to whether a decision by the Ombudsman to conduct a further investigation would be a breach of the above agreement, was not a question of jurisdiction upon which an application under s. 15(5) of The Ombudsman Act could be made.

The five land acquisition agents have appealed the decision to the Court of Appeal, and a hearing date has yet to be scheduled. As such, the complaints of the 28 landowners and former landowners in the North Pickering area whose complaints were part of the Ombudsman's reported investigation, and whose cases were submitted to a Commission appointed under The Public Inquiries Act, pursuant to the Agreement referred to above, are being held in abeyance pending the ultimate disposition by the Courts of the question of the Ombudsman's jurisdiction.

NORTH PICKERING HEARINGS

Complete written submissions from counsel for the Ministry of Housing and counsel for landowners were received by early September, 1979. Oral argument, by way of reply, occupied approximately 22 days, between October 4 and November 16, 1979.

Keith Hoilett, Chairman of the Hearings, is well into his review of the evidence and arguments and has commenced the writing of his report. The volume of material to be reviewed and considered makes it impossible to forecast with any reasonable accuracy a date for the report.

ADMINISTRATIVE RESTRUCTURING

In order to expedite the completion of a final report of the North Pickering Hearings, Mr. Keith Hoilett, Executive Director, is spending all of his time on this project. This has necessitated internal administrative restructuring and the responsibility for all administrative functions has been assigned to the Executive Assistant to the Ombudsman, Mr. Frank McArdle.

THE WORKMEN'S COMPENSATION BOARD POLICY ON BENEFIT OF DOUBT

In our Sixth Report there were comments made concerning the policy of the Workmen's Compensation Board on Extending "benefit of reasonable doubt". Subsequently I and members of my staff have held several discussions with the Board on this issue.

On February 20th, 1980, the Board forwarded to our Office the text of their policy on "Benefit of Doubt". The Board's letter and policy statement are included in Appendix C.

BACKLOG OF CASES

There is still a backlog of Workmen's Compensation Board complaints and as a result I have allocated resources toward a special project involving a temporary expansion of our present capacity to process complaints.

Further, I have initiated an extensive review of the existing policies and practices of the Workmen's Compensation Board as they relate to complaints made to my office.

Because of her extensive experience in Workmen's Compensation matters, I have asked Miss Ellen Adams, Director of Special Services from my office, to head the investigation to be conducted. To assist her with the investigation she has retained the full-time services of a legal researcher and a secretary and the part-time consulting services of Professor T.G. Ison of Queen's University. It is my intention to have the investigation completed within the next two years.

RECOMMENDATIONS DENIED AND SECTION 22(3) (d) or (e) RECOMMENDATIONS

As a means of taking inventory of all cases since the inception of the Office of the Ombudsman where either: (1) a recommendation under s. 22(3) of The Ombudsman Act, 1975 was denied by the governmental organization to which it was addressed, or (2) a recomendation was made pursuant to s. 22 (3)(d) or (e) that a practice be altered or a law reconsidered, I appended to my Sixth Report two charts, appearing at pages 146-170 inclusive. Appendices A and B summarized the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organization, and where appropriate, by the Select Committee on the Ombudsman.

The Committe, at pages 51 and 52 of its Seventh Report, commented that it considered the charts a welcome addition to the Ombudsman's Report and suggested that they be a permanent part of the Ombudsman's reporting system.

Pursuant to the Committee's recommendation, I have up-dated the charts as they appeared in my Sixth Report, and included them again as Appendices A and B to this Report. The cases summarized are only matters outstanding as of March 31, 1980, that is, only those cases wherein it is anticipated that some further action will be taken either by the governmental organization referred to, or where appropriate, by the Select Committee itself.

COMPLAINT HANDLING PROCEDURES

We have now completed our study of the system of handling complaints and the flow of files through the office. It is our intention to implement the results of this project in conjunction with the word processing system. One beneficial result of this project has been the establishment of a coding mechanism by which we will be able to trace all movement of files throughout the office and thus minimize delays in the processing of files.

PERFORMANCE APPRAISAL STUDY

I have temporarily set aside implementation of the Performance Appraisal Study. Initially, the appraisal forms were to be put into effect before our internal management restructuring was completed. These forms encompassed only the positions of Assistant Directors and below and there was no standardized form to appraise the Directors. I expect that the appropriate appraisal forms for the Directors will be available in the near future and at that time I will reinstitute our performance appraisal system.

SALARY ADMINISTRATION STUDY

The Salary Administration Study referred to in our last report was recently completed and sections of the report have already been implemented. One facet of this study involved a review of the existing salaries in the Office and where such salaries indicated under-payment these salaries were adjusted appropriately. Another facet of the study which has been implemented is the determination that performance will be the basis on which all future salaries will be administered and automatic increments in salary will be discontinued.

LEASE

As stated in our last report the lease on our present quarters expires on July 31, 1980. However, I have extended the lease for an additional six months, till January 31, 1981. I have decided not to renew our lease and I have finalized negotiations to lease the Lillian Massey Building for a period of 10 years. This building will provide us with considerably more space and

it is our intention to use some of the space to provide private offices for all of our investigators and researchers. In this way we will promote an increase in our efficienty and productivity.

WORD PROCESSING

Our project to initiate a word processing system in the Office has now been completed and several recommendations have been submitted. Several of these recommendations are being implemented immediately and we expect our word processing system to be fully operational upon occupancy of the new premises.

AUTOMOBILES

At present our Office has ownership of 11 automobiles. We have reviewed our automobile fleet and we have decided to dispose of the majority of these vehicles and instead we have decided to lease six vehicles under a two year agreement which provides a new vehicle at commencement of the lease and a replacement new vehicle after 12 months have elapsed.

MICROFILMING

Our Office has entered into an agreement with the Archivist of Ontario regarding the transfer of our closed complaint files. The agreement contains provisions which ensure that the Ombudsman will be able to meet the confidentiality requirements set forth in Secion 13 of The Ombudsman Act, 1975. During the forthcoming fiscal year the administrative procedures necessary to give effect to the agreement with the Archivist of Ontario will be implemented. The introduction of these procedures will result in the transfer of 4,000 closed files from expensive downtown office space. In addition, the microfilming of the closing documentation will remain as an ongoing component of our records system.

ADMINISTRATIVE FAIRNESS

This topic was the subject of our formal presentation to the Canadian Conference of Legislative Ombudsman held in New Brunswick in September of 1979 which I and other members of my staff attended.

As a result of several recent court cases involving public agencies, some operational changes have been made in all the investigative directorates. These cases make it clear that agencies must act fairly when performing administrative as well as quasi-judicial duties. Specifically, before making an adverse decision, the agency must give the person affected by it notice of the case against him or her, and a genuine opportunity to respond to it.

The Ombudsman had always given governmental organizations and third parties an opportunity to respond to a report or recommendation which might adversely affect them; this is required by section 19(3) of The Ombudsman Act. A formalized procedure within the Office has been instituted whereby investigators give complainants an opportunity to respond to the case against their complaint. This involves notifying complainants of the important facts, policies and law on which the governmental organization bases its position. Although these "administrative fairness" procedures tend to prolong investigations, they ensure that complainants are given a real opportunity to know and answer the case against them.

CONCLUSION

As I hope is obvious from the preceeding pages the Office is well into a phase of consolidation of resources in our commitment to provide the most effective and efficient service to the public.

I continue to be impressed by the high calibre of work and commitment of the many talented men and women who staff my Office.

But our task would be extremely difficult were it not for the idealism and integrity of our public servants. I am grateful for their cooperation and whatever success we enjoy is largely a tribute to them.

CHAPTER TWO

DETAILED CASE SUMMARIES

MINISTRY OF

COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 1

In April of 1978, this complainant wrote to our Office complaining of his treatment as an employee of a Community College. He informed us that during his nine years' employment with the College he had been demoted twice, with a commensurate reduction in salary.

Having received the position statement of the Community College in reply to our notice of intention to investigate this complaint, the file was assigned to one of our investigators.

In the course of investigating this complaint, the investigator interviewed the complainant; a member of the staff of the College; the complainant's co-worker; the former union representative for the College; and two government employees concerned with collective bargaining and classification. The complainant's situation was thus clarified.

The complainant was originally hired by the College as a Maintenance Handyman in 1969. As the campus was still under construction, the complainant, then the only employee of the maintenance staff, performed miscellaneous duties. However, when in 1970 - 71 students began to attend in rapidly increasing numbers, additional maintenance work was needed. Another man was then taken on as a Caretaker 3, more or less as a helper to the complainant. Shortly after the start of the 1971 - 72 academic year, it became apparent that a qualified tradesman was required to do electrical repairs. Since neither of the men then employed on the maintenance staff had qualifications in the trade, the position of Maintenance Journeyman was filled from the outside by a third man.

Subsequently, the College decided the three positions should be more accurately classified. Upon reviewing the complainant's job functions, the College decided that he should not be classified as a Maintenance Handyman. He was informed at that time that a Maintenance Handyman was not required; however, if he wished to keep his handyman classification, he could "bump" his counterpart at another campus. The complainant refused to do this, feeling it was not proper. It was not made clear to him, however, that he was, in essence, being laid off as a Maintenance Handyman, and that by refusing to exercise his right to "bump" his counterpart, he would lose his seniority.

The complainant was under the impression that there was a Supply Clerk 4 classification, and that this would be his new position, allowing him to maintain his same salary. However, no such classification existed; thus he was reclassified as Supply Clerk 3, a position with a lower salary than Maintenance Handyman 1. The complainant's salary was therefore red circled (frozen). Although he did express his dissatisfaction with this reclassification, he did not formally grieve it.

In December of 1973, the man hired in 1970 - 71 in the Caretaker 3 position was reclassified to Maintenance Handyman. This came as a result of his being assigned more and more maintenance jobs during the past year and a half. The complainant, on the other hand, had continued doing his duties as before, and had not been given the opportunity to undertake any maintenance work during that time.

In January of 1974, the complainant submitted a grievance that the College failed to post a Maintenance Handyman opening at the campus before promoting a person to that position. Further, he felt that his seniority was not considered when the appointment was made. The grievance was denied after a hearing in June of 1974. In 1977 the complainant received another notice of change, reclassifying him from a Supply Clerk 3 to a Supply Clerk 2, another demotion. In view of all this, he felt that the College had treated an employee of many years very poorly, and he wanted the circumstances investigated.

In a response to our notice of intention to investigate, the President of the College informed us that the complainant "lost all claim to seniority as a Maintenance Handyman in May 1972, upheld by the Arbitration Hearing in June 1974. The facts of the recent reclassification are clearly supported by the classification guidelines. The College does not have, at this time, work at (this) Campus, in any area to justify the position of Supply Clerk 3."

During the course of the investigation, it appeared to the Ombudsman that there might be sufficient grounds for making a report or recommendation which might adversely affect the Community College. As a result, the new Chairman of the Board of Governors of the College was notified, pursuant to Section 19(3) of The Ombudsman Act, 1975 of the possible conclusions and recommendations of the Ombudsman, and was given the opportunity to make representations to the Ombudsman concerning the possible adverse report.

In his letter the Ombudsman informed the Chairman that, according to College officials, the individual holding the classification of Caretaker 3, a painter by trade, was competent in the maintenance functions he undertook. However, at no time did the College's job evaluation reports for the complainant indicate that he was not also capable of performing maintenance work. The complainant, though not a painter by trade, had taken a carpentry course at the College before joining the maintenance staff in 1962. The College had advised the complainant that no Maintenance Handyman was required, yet there evidently was maintenance work to be done since the Caretaker 3 was allowed to undertake a variety of maintenance duties to the extent that he was reclassified as Maintenance Handyman. It would appear that the complainant, although he had previously held the position of Maintenance Handyman, was not given the same opportunity as the Caretaker 3 to perform these maintenance duties.

Thus, it appeared to the Ombudsman that it might be open to him to conclude that the College, in failing to provide the complainant with an opportunity for job advancement and thereby denying him an opportunity to be reclassified to his former position as Maintenance Handyman, acted "unreasonably" within the meaning of Section 22(1)(b) of The Ombudsman Act, 1975.

The Ombudsman also stated that it would appear that it might be open to him to recommend in accordance with Section 22(3)(g) of The Ombudsman Act, 1975, that the complainant be given an opportunity to advance into the next job classification, keeping in mind what he is capable of doing physically. (It was our understanding that he had recently suffered a heart attack.)

The reply from the Chairman reiterated that the complainant had lost all rights to a Maintenance Handyman classification by refusing to exercise his rights to displace (bump) a counterpart at another college in 1972. Furthermore, the College considered the former Caretaker 3's reclassification to Maintenance Handyman in December, 1973 to be a recognition of his increased responsibilities due to the increased activity at the College, and especially at the new building recently added to the campus. The Chairman also pointed out that the complainant had not applied for any posted positions since he was originally hired in 1969. However, he assured the Ombudsman that the complainant would be given every consideration if he wished to apply for a new or replacement position, which positions would be posted internally to conform to the present collective agreement.

The Ombudsman was not persuaded by the College's representations. He felt that the College had not addressed itself to his concerns that the complainant was not accorded increased responsibilities and therefore an opportunity to be reclassified. The Ombudsman did not question the fact that the complainant lost his seniority rights to the Maintenance Handyman position. However, he could have been reclassified to the position if he had been given an opportunity, or at least equal opportunity as the Caretaker 3, to undertake maintenance duties. Furthermore, the College had stated that the increased responsibilities on the part of the Caretaker 3 were due to the renting of a building to extend the Campus. He noted that if the College had planned this expansion, it would have been obvious that there would be a need for a Maintenance Handyman and the position should have been posted.

Accordingly, the Ombudsman concluded pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the actions of the College were "unreasonable" in regard to the complainant's claim. He recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that should the occasion arise whereby the complainant may undertake any increased responsibilities which may lead to a reclassification, that he be given the opportunity to do so.

Following receipt of the Ombudsman's recommendation, the President of the College replied that he was still of the opinion that the reclassification of the Caretaker 3 to Maintenance Handyman did not create a new job, but instead recognized his increased activities at the Campus. He also stated that it would have been inconsistent with the collective agreement to assign maintenance work to the complainant when his classification as Supply Clerk 3 did not cover such duties, while the other man's classification as Caretaker 3 did cover maintenance work. The finding that the College was "unreasonable" was therefore rejected. The College nevertheless agreed, without hesitation, to accept the recommendation made by the Ombudsman.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 2

In December, 1974, this complainant, who was a recipient of a Family Benefits Allowance and Supplementary General Welfare Assistance, received $5,500.00 in a motor vehicle accident settlement. However, at that time she failed to report receipt of this money to the Provincial Benefits Branch of the Ministry of Community and Social Services. In August, 1976 when she declared assets of over $6,000.00 the Ministry discovered that she had received Family Benefits to which she was not entitled for approximately 1½ years. An overpayment of $4,872.00 was determined and recovery proceedings were instituted at a rate of $5.00 per month.

In addition, the Ministry took the position that a payment of $4,350.53 made by the complainant to her son in October, 1976, was an inadequate transfer of funds and would be considered by the Ministry as a loan, to be repaid by her son and deducted from her Family Benefits Allowance at a rate of $25.00 per month.

On Janury 27, 1977 the complainant appealed this decision to the Social Assistance Review Board which upheld the Director's decision. Following receipt of the complaint against the Board's decision by this Office, a letter was sent to the Deputy Minister of Community and Social Services in accordance with the requirements of The Ombudsman Act, 1975, advising her of the Ombudsman's intention to conduct an investigation.

During the investigation, the file maintained by the Ministry of Community and Social Services was thoroughly examined and new evidence was obtained during several personal and telephone interviews with the complainant and government officials.

With regard to the issue of an inadequate transfer of funds, the investigation revealed that the complainant gave to her son, $4,350.53 to assist him in paying off his Canada Student Loan, a promissory note and a large dental bill. However, this was done after she was informed by the Ministry that her assets were in excess of the allowable amount under The Family Benefits Act. In discussing this with the complainant the investigator was advised that she was not aware that certain expenditures were allowable under the Family Benefits program and that had she known, she would have handled the matter differently.

With regard to the complainant's failure to report receipt of the accident settlement, the investigator learned that her lawyer had notified the Municipality's Social Services Department of receipt of the settlement and that the complainant was under the impression that this constituted proper notice. In addition, it was noted that in the year following the complainant's receipt of the accident settlement, the Ministry did not send to the complainant an annual Present Condition Report. Consequently, a considerable debt was accumulated and the overpayment was not discovered until the following year (1976).

The Ombudsman formed the tentative conclusion that under the terms of Regulation 287 under The Family Benefits Act, the complainant did transfer assets for an inadequate consideration and the Social Assistance

Review Board did not act unreasonably in upholding the decision of the Director of Provincial Benefits to consider the payment of $4,350.53 to her son, as a loan.

The Ombudsman also tentatively concluded that the Ministry had erred by not requesting a Present Condition Report in 1975, thus compounding the overpayment by approximately twelve months.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Ministry of Community and Social Services and the Social Assistance Review Board were informed that, based on the investigation at that point, there may have existed sufficient grounds for the making of a report or recommendation that could adversely affect the Ministry. Representations were invited respecting the aforementioned tentative conclusions and the following tentative recommendation:

> "The Ministry of Community and Social Services (should) acknowledge that the overpayment to (the complainant) for the period of May, 1975 to April, 1976 inclusive, was incurred as a result of its administrative error and reduce the total overpayment owed by (the complainant) accordingly."

The response which we received from the Chairman of the Social Assistance Review Board indicated that he was not satisfied that the Ministry had made an administrative error in not sending the Present Condition Report to the complainant in 1975.

The Deputy Minister responded to both issues of the investigation. He remained firm in his position in that the payment of money from the complainant to her son constituted an inadequate transfer of funds which was being recovered appropriately at $25.00 per month.

However, the Deputy Minister also stated that although he could not accept the premise that the Ministry should be held responsible for the overpayment simply because the Provincial Benefits Branch failed to send a mail-out Present Condition Report, he was satisfied that in light of the fact that she reported the assets in her Present Condition Report completed in August, 1976, and since the matter was reported to Municipal Social Services officials, she would have reported such assets had she received a Present Condition Report in 1975. The Deputy Minister stated accordingly, the Director of Provincial Benefits was recommending that no further recovery action be taken in respect to the balance of the overpayment.

Having carefully considered the responses from the Ministry and the Social Assistance Review Board the Ombudsman concluded that the Board did not act unreasonably in upholding the decision of the Director of Provincial Benefits to consider the payment of $4,350.53 as a loan to her son.

In addition, the Ombudsman concluded that the Ministry's decision to take no further action to recover the balance of the overpayment which the Ministry had been recovering at $5.00 per month, was a reasonable solution to this aspect of her complaint.

The complainant was advised of the Ombudsman's findings and we were notified of her satisfaction with the results.

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

CENSOR BOARD OF ONTARIO

RESIDENTIAL PREMISES

RENT REVIEW BOARD

DETAILED CASE SUMMARY NO. 3

This complaint was against the Ministry of Consumer and Commercial Relations and was brought to the Ombudsman's attention through a personal interview with the complainant and his business partner in March of 1977.

The complainant, who operates a travel agency, contended that while he was in Europe, a travel industry investigator, acting contrary to The Travel Industry Act and the order of a provincial judge, seized his personal belongings and business records while they were in storage for the duration of his absence and did considerable damage to them. As well, he claimed that his business records were not returned to him promptly as required by Section 20 of The Travel Industry Act. The complainant also contended that travel industry officials caused criminal charges to be laid against him as a result of false allegations made by a former business associate of his, without trying to verify the allegations.

The complainant had been charged with theft over $200.00 and he had also been informed that he was charged with "leaving debts in excess of $100,000.00 upon the closure of his business" although the precise nature of this charge was never explained to him. He had been arrested and spent two nights in a police station prior to being released on bail. The theft charge had later been withdrawn by the Crown Attorney, and no further mention had been made of the other charge.

On June 23, 1977, the Ombudsman informed the Deputy Minister of Consumer and Commercial Relations of his intention to investigate this complaint.

Our investigation did not discover any evidence of the complainant's belongings having been damaged by Ministry staff. However, one cabinet seized by the Ministry did contain personal belongings which were returned to the complainant after his court appearance in June, 1977.

During the course of the investigation the Ombudsman formed the opinion that the Ministry should have returned the complainant's business files more promptly. He also thought that the Investigation and Enforcement Branch of the Business Practices Division of the Ministry had acted contrary to law in providing information obtained in the course of a Travel Industry Act investigation to law enforcement officials that they could consider laying criminal charges. He thus informed the Deputy Minister of his possible conclusions and invited him to make representations, pursuant to Section 19(3) of The Ombudsman Act, 1975 respecting his possible adverse report. The same opportunity was also accorded to an investigator from the Investigations and Enforcement Branch and to the Executive Director of that Branch. The Ministry forwarded their representations to our Office by letter dated March 29, 1979. The Ministry could not agree that it had acted in any way improperly or that its practices were improper.

Sections 20(4) and (5) of The Travel Industry Act state that a Travel Industry investigator can search any building, dwelling or receptacle for books between sunrise and sunset if he has obtained an order from a provincial judge. It also states that the investigator can remove items

provided he makes out a receipt for them and returns them promptly to the person whose affairs are being investigated.

Our investigation revealed that investigators under The Travel Industry Act were authorized by a Provincial Court Judge on April 29, 1976 to enter into a moving and storage company's premises, search for, and remove business records which belonged to the complainant. The Ministry kept some of the seized records for five months, others for thirteen months, some until the complainant returned to Canada, and others until charges against him were dropped.

The Ombudsman concluded, in accordance with Section 22(1)(a) of The Ombudsman Act, 1975 that the Ministry appeared to have acted contrary to law in retaining records far longer than suggested in Section 20(5) of The Travel Industry Act. The Ministry's representations of March 29, 1979 suggested to the Ombudsman that the Ministry had made use of an order under Section 20 of The Travel Industry Act as if it were a search warrant under the Criminal Code or The Summary Convictions Act.

Thus, the Ombudsman recommended, in accordance with Section 22(3)(g) of The Ombudsman Act, 1975 that in future the Ministry should speed up its return of seized material. The Ombudsman also noted, from memoranda in the Ministry's file, that the Ministry had kept insufficient records or receipts of seized or removed material. Careful records might have provided the Minsitry with an easy and complete answer to part of the complainant's complaint.

As to the alleged impropriety of Ministry officials providing information obtained from an investigation under The Travel Industry Act to law enforcement officials, so that they could consider laying criminal charges, the Executive Director of the Business Practices Division pointed to Section 4(1)(b) of The Travel Industry Act. This section states that an applicant is entitled to registration except where ". . . the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty". The Act authorizes a Director to appoint one or more persons to make an investigation where, upon a statement made under oath, he believes on reasonable grounds that any person has violated The Travel Industry Act or regulations, or has committed a criminal or other offence relevant to his fitness for registration. The Director also pointed out that his investigators are special constables appointed under The Police Act but because the Ministry lacks holding and prisoner processing facilities, local police authorities are usually requested to take carriage of matters where necessary. In this case an investigation order was given and the investigator discussed the case with the Crown Attorney who directed him to lay a charge of theft against the complainant.

Although the Ombudsman could not support this aspect of the complainant's complaint in view of this, he did have misgivings because the complainant had spent two nights in jail as a result of a charge that was later withdrawn because the informant could not give evidence necessary to substantiate the charge. Therefore, the Ombudsman suggested that the Ministry give consideration to seeking an amendment to Section 21 of The Travel Industry Act to provide clear authority for the sharing of information with law enforcement authorities in appropriate cases.

Following receipt of the Ombudsman's report the Ministry responded and agreed with his findings, explaining, however, that the absence of the complainant from the country and the unwillingness of the owner of the moving company to accept the return of the materials, had contributed to the delays experienced.

The Ministry did state that it was its intention to follow the procedures set down in The Travel Industry Act in all current and future investigations and also that an amendment to Section 21 of the Act to provide clear authority for sharing information with law inforcement authorities in appropriate cases was currently being examined.

DETAILED SUMMARY NO. 4

The complainant wrote to the Ombudsman in May, 1978 with a complaint against the Censor Board of Ontario concerning its refusal to approve a film for exhibition in Ontario.

The complainant contended that the movie had been censored because of the theme rather than the content, and was of the opinion that the Board did not have the authority to censor a movie because of a particular theme.

A second complainant made the same complaint and also complained that moviegoers are not notified when films have had segments deleted by the Board.

A letter was sent to the Censor Board of Ontario informing it of the Ombudsman's intention to investigate these complaints.

Upon receipt of a statement of the Board's position on the complaints, our file was assigned for investigation and legal research. During the investigation screenings of the film were arranged with the cooperation of the distributor and it was viewed by members of the Ombudsman's staff and the Ombudsman. The investigator viewed a 20 minute montage prepared by the Board, composed of scenes censored from various movies. The pertinent officials were interviewed.

The Ministry of Consumer and Commercial Relations' lawyer raised the issue of the Ombudsman's jurisdiction to investigate the complaint for the reason that in his view the complainants were not affected in their personal capacity by the decision complained of. The Board did not, however, object to the continuation of the investigation.

In its response to the Ombudsman's notice of his intention to investigate these complaints, the Board stated its reasons for refusing to approve the movie as follows:

> "Let the reason for our concern be unmistakeably clear: It has nothing to do with the story. It has

nothing to do with the quality of the film or the ability of the film maker. It has nothing to do with pornography. It has nothing to do with violence. The Board's refusal to approve the film is predicated on two grounds:

(1) the exploitation of a child,

(2) the establishing of a precedent."

During the course of the investigation the Ombudsman arrived at certain tentative conclusions about the Board's decision not to approve the movie. He reported his tentative conclusions together with his tentative recommendations to the Board in accordance wtih Section 19(3) of The Ombudsman Act, 1975 in April, 1979.

The Ombudsman indicated to the Board that on the basis of the investigation conducted so far, it appeared that it might be open to him to conclude that the Board based its decision on irrelevant grounds or considerations and that it failed to take into account all the relevant considerations.

It appeared to the Ombudsman that the Board's concern about the exploitation of a child was based on the fact that the child is filmed in the nude and is required to appear in scenes and speak dialogue in which her sexual services are offered. It was his tentative conclusion that the Board's view that it should not approve officially the product of what it viewed as sexual exploitation may be an irrelevant consideration.

The Ombudsman's reasons for arriving at this tentative conclusion were that the Board had not presented any evidence that local child labour laws or child welfare laws were violated in the filming of the movie. It was the Ombudsman's second tentative conclusion that even if there was evidence that local child labour laws and child welfare laws had been violated, this may not be a relevant ground or consideration on which to base the refusal to approve the movie.

The Board's second consideration -- the setting of a precedent -- also tentatively appeared to the Ombudsman to be an irrelevant consideration because The Theatres Act requires that every movie be submitted to the Board for approval and the Board must view and decide upon each and every one; thus the precedent argument had no bearing where the approving body must review every movie automatically. Further, the Board's decision in this case was ample evidence of its independence of thought and of its ability to withstand the argument that it had approved similar movies in the past.

The Ombudsman then informed the Board what he tentatively considered to be the proper and relevant grounds and considerations for the Board to consider in deciding whether to approve a movie, although he noted that it was not for him to lay down a code of criteria. The Ombudsman considered the English legislation, cases in Canadian law relating to obscenity and censorship, and movie censorship legislation in the other provinces.

His tentative conclusion was that the Ontario Board of Censors is not free to apply considerations which have no connection or relation to the traditional objects of censorship. Instead, the Board must apply considerations which are connected to the objects of censorship, and which are not unreasonable. The material studied suggested to him, firstly, that the Board of Censors ought to examine the movie as a whole, taking into account such things as its content, its purpose, and its artistic merit. The Board ought to take into account the effect of the movie as a whole on its adult viewers, bearing in mind what the Board takes to be community standards. The material suggested to him that the manner in which the movie was made is a consideration foreign to censorship, in all but perhaps the most unusual case.

The Board ought to take into account the aspect which is encoded in the Criminal Code in Section 159(3) as the "public good" defence -- whether the things objected to are "necessary or advantageous to religion, or morality, to the administration of justice, the pursuit of science, literature or art, or other objects of general interest".

It appeared to the Ombudsman from the initial response by the Board that it did not base its decision on a consideration of the movie as a whole and did not take into account the various factors which he had stated and which appeared to him to be the factors censor authorities must take into account. Thus, it appeared to be open to the Ombudsman to recommend that the Board reconsider its decision on the film, taking into account all the relevant considerations, and not taking into account any irrelevant considerations.

In its response to the Ombudsman's tentative conclusions and recommendations the Board restated its objection to the Ombudsman's jurisdiction to investigate the complaint. The Board also made representations on the substance of the Ombudsman's tentative conclusions and recommendations. The Board stated that in its initial response to the Ombudsman it did not intend its comment on child labour laws to be interpreted as a factor in the Board's decision.

The Board pointed out that The Theatres Act provides no written criteria on which the Board should make its decisions. However, guidelines have been developed which are flexible and change with the times. New standards are developed as new situations arise and in addition to any objective guidelines there is always a subjective element to any decision.

It was the Board's position that the basic factor in the Board's decision on the movie i.e., the exploitation of a child in a role requiring her to appear nude and in various scenes of a sexual nature, is a relevant criterion to be considered by the Board. On reflection the Board was convinced its decision was legitimate and correct. The Board pointed out that over the past few years there has been increasing public concern about films featuring children in scenes of a sexual nature and in support of this referred to the deliberations of the Standing Committee of Justice and Legal Affairs in 1977 and 1978 and The Protection of Children Act which became law in England in 1978. Reference was also made to a Canadian case in which the majority opinion of the Supreme Court of Canada affirmed that a provincial censorship board is clothed with authority to fix its own local standards of morality deciding whether a film is to be rejected or not for local viewing."

The Board stated that its considerations all involved questions of morality or propriety which it believed to be local to this province. The exploitation of a child by her participation in a movie is, in its view, a consideration of propriety or morality which the Board may take into account in reaching a decision with regard to a particular movie.

The Board strongly disagreed with the Ombudsman's tentative conclusion that the Board did not base its decision on the consideration of the movie as a whole and did not take into account the various factors referred to by the Ombudsman.

In respect to the precedent question, the Board stated that it must deal with movie distributors on an ongoing basis, and that while the Board does make its decision on a film by film basis, the "precedent" consideration is a valid factor in its decisions.

The Ombudsman gave careful consideration to the Board's representations. He accepted its statement that child labour laws were not a factor in their decision, and that the Board did indeed consider the movie as a whole, including its content, purpose, and artistic merit. The Ombudsman found that he must also accept the Board's concern about setting a precedent since the Board's representative was speaking as an experienced administrator.

The Ombudsman considered that the key issue raised by the complaint was whether the manner in which the movie was made is a proper and relevant consideration for the Board.

The Ombudsman reached the conclusion that the presence of child exploitation in a movie was not an irrelevant ground or consideration as set out in Section 22(2) of The Ombudsman Act, 1975. Nor was he prepared to conclude that the Board's decision not to approve the film was "unreasonable, unjust, oppressive, or improperly discriminatory" as set out in Section 22(1)(b). He added that he did not see it as his function to substitute his opinion for the Board's, provided, of course, that the Board's opinion was not unfounded; in the field of censorship there is seldom one "right" opinion.

Accordingly, the Ombudsman was unable to support this complaint against the Board's decision not to approve the film.

In relation to the complaint that audiences are not warned in advance that the Board has required cuts to be made from a movie, the Ombudsman learned that distributors sometimes make cuts prior to submitting a movie to the Board in order to avoid rejection. Distributors sometimes make cuts, too, if they wish to re-submit a movie to the Board to obtain a more favourable classification. There are other points at which the distributor may of his volition make cuts, before or even after the movie has been released. In view of this, the Ombudsman did not disagree with the Board's view that it would be unreasonable for it to require distributors to warn audiences in advance of cuts required by the Board.

Accordingly, the Ombudsman could not support this aspect of the complaint. However, he did make the suggestion that the Board consider seeking authority to require distributors to warn audiences whenever cuts had been made from the original released version of the movie.

In respect to the Board's position on the Ombudsman's jurisdiction to investigate complaints of this type, the Ombudsman noted that there is no statutory right of appeal to the courts or to any other tribunal against a decision of the Board, for either a movie producer or distributor, or a member of the moviegoing public. The decision of the Board is final, subject only to it reconsidering its own decisions, and subject also to possible judicial review pursuant to The Judicial Review Procedure Act. This was the background against which the Ombudsman affirmed his jurisdiction to investigate complaints against decisions of the Board of Censors, be they made by movie producers or distrbutors, or by private citizens.

The Ombudsman understood the Board's objection to his jurisdiction to be that private citizens, whose sole motivation for complaining was their desire to see a particular movie, were not affected in their personal capacity by the decision. He gathered that the Board would not raise this objection to a complaint against a Board decision made by the producer or distributor who has an economic interest in the decision.

The Ombudsman noted that The Ombudsman Act, 1975 requires a complaint to be made by a person affected in his personal capacity but does not define what is meant by being affected in one's personal capacity.

In the Ombudsman's opinion this concept is not identical with the concept of standing, or locus standi, to bring a court action. It is evident that the Legislature intended to introduce an element of standing into the test of jurisdiction under The Ombudsman Act, 1975. However, the function of the Ombudsman is very different from the function of the courts.

The Ombudsman Act, 1975 is a remedial statute which, in relation to jurisdiction, should in the Ombudsman's view be interpreted liberally. If he forms the opinion that the complainant has an insufficient personal interest in the subject matter of the complaint, then it is always open to him under Section 18(2) of The Ombudsman Act, 1975 to decide not to investigate, or to discontinue his investigation.

In respect of the Board's decision which was the subject of this complaint, the complainants challenged the Board's authority to make the decision. The Ombudsman stated that he would be loath to permit a narrow view of standing to prevent him from considering these complaints, especially since the complainants had no other way of subjecting the Board's decision to review.

DETAILED SUMMARY NO. 5

This was a complaint against the Residential Premises Rent Review Board for failing to use independent experts when determining the proper allocation of the costs of servicing an apartment building, consisting of residential, commercial and recreational areas. The complainants were convinced that costs incurred by the commercial and recreational sections were being passed on to their residential section.

The complainants contended that at the original rent review hearing, the Rent Review Officer did not fully consider the cost difference between residential and commercial space. They appealed the decision, requesting an opportunity to place before the Rent Review Board their objections to the Rent Review Officer's methods in allocating costs for the various areas of the building.

The Board upheld the decision reached in the original rent review hearing. The complainants contended that the figures presented by the landlord at the appeal did not correctly reflect the proper allocation of costs. As a result, the complainants requested a rehearing but the Board turned them down.

In a letter to the Ombudsman, the Chairman stated that at the initial hearing the Board agreed to visit the site, which is not its normal procedure, in order to fully comprehend the allocation of building space. Furthermore, the panel sought guidance from an independent appraiser and determined a fair space allocation which it detailed in its reasons for denying the appeal.

The complainants said that experts had not been consulted. They requested that the Board use the services of experts to determine a realistic allocation of costs on the principle of the use of such services as water, heating, and hydro electric power in various areas rather than on the square footage basis which they believed had been used by the Board.

Our investigator reviewed the contents of the Board's file and interviewed its Information Officer. He examined the building in question, discussed the matter of hydro electric costs with an official of the local Hydro Electric Power Commission, examined a report submitted to the Board by a real estate research company, interviewed a staff researcher with that company, and discussed certain aspects of that report with an official of an electrical engineering consulting firm.

Our investigator found that the owners of the apartment building in question had based their costs on a square footage basis even though a normal commercial retail area consumed more power per square foot than a conventional apartment suite. A true division of costs would have to be based on usage. Our investigator ascertained that although the Board was concerned about the division of costs in the building it did not use the services of an independent appraiser to assist it during the appeal hearing.

Thus, during the course of the investigation, the Ombudsman formed the view that it was open to him to conclude that the Board exercised its discretion improperly in not contacting the Minister to engage an independent appraiser to provide technical assistance, as permitted by Section 19(3) of The Residential Premises Rent Review Act. Accordingly, he reported his possible conclusion to the Chairman together with his possible recommendation.

Because in his view the Board might be "adversely affected" by his possible conclusion and recommendation, he accorded to the Board the opportunity to make representations respecting the possible adverse report pursuant to Section 19(3) of The Ombudsman Act, 1975. Representations were received on behalf of the Board by letter. In short, the Board could not agree that its discretion in the matter had been improperly exercised.

The Chairman provided a copy of a report submitted to the Board by a real estate research company. This report contained the results of an examination of the building and division of costs in its three separate areas. However, it was dated in 1978 and it appeared unlikely that it was used by the Board during the appeal hearing in 1977.

Our Office made a further inquiry of the Board and in a letter to our Office, the Chairman advised that an error had been made regarding the independent appraiser; however, he still felt that the complainants were given a full and fair hearing.

The Ombudsman determined, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the panel of the Board which heard the complainants' appeal exercised its discretion improperly by failing to contact the Minister to obtain permission to use the services of a proper independent appraiser to establish the division of utility costs in the building's three separate areas. Unfortunately, since the commercial area had by then been converted to apartments, an engineering study would not now show the actual costs as they were in 1977.

As a result, the Ombudsman supported the complainants' contention and recommended to the Board pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that in future, where the Board requests the Minister to engage an expert to provide technical or expert assistance, that care be taken to ensure that the assistance provided is timely, and that it correctly addresses the problem faced by the Board.

The Chairman of the Board noted the recommendation and stated that it would be carried out if in the future a similar situation should arise.

MINISTRY OF

CORRECTIONAL SERVICES

ONTARIO PAROLE BOARD

DETAILED SUMMARY NO. 6

Two complainants, inmates of a southwestern detention centre, wrote letters to this Office describing an administrative practice which they said was unreasonably applied in their cases.

This Office notified the Deputy Minister of Correctional Services, by letter, of the Ombudsman's intention to investigate the inmates' complaints, which were stated as follows:

> "The inmates state that they are entitled to send three letters per week of one page each. They explain that if they use more than one page when writing a letter, each extra page they use is subtracted from their entitlement for that week. The complainants contend that the established practice at the detention centre of restricting letters to one page in length, is unreasonable."

The Regional Director of Institutional Programs replied on behalf of the Deputy Minister. The complainants' files were then assigned for investigation. Our investigator reviewed the letter control log kept in the unit where the complainants resided and the Central Letter Control Log, obtained a copy of the relevant Institutional Standing Order, and conducted personal interviews with three members of the correctional staff who had worked on the complainants' unit about the time they wrote their letters to the Ombudsman.

In his letter, the Regional Director stated:

> "This office has investigated this allegation and I am advised that inmates at (the detention centre) are permitted to send out three letters per week which is one more than the Regulations call for.
>
> The allegation that 'if they used more than one page when writing a letter, each extra page they used was subtracted from their entitlement for that week' is unfounded. The Superintendent has informed me that this has never been the practice at the institution. Inmates at the institution are provided with one page of writing paper and the Unit Supervisor may authorize additional writing paper when it is necessary.
>
> I have discussed the complaint with the Superintendent pointing out the benefits of regular correspondence occurring between the inmate and his family and friends. I have been assured that while appropriate controls must be placed upon letters mailed from the institution and in view of present financial constraints that the Superintendent would

> advise Unit Supervisors to use good judgement in the issuing of writing paper to inmates. Sufficient stationery will be made available to the inmates."

This Office's investigation confirmed that in addition to privileged letters and business letters, inmates were permitted a quota of three personal letters per week. The existing Institutional Standing Order defined a letter as "should be one page, one side only". However, it was also stated that the Unit Supervisor may authorize more pages as he considered necessary.

However, our investigation also revealed a divergence of opinion among the staff concerning whether or not, for the purpose of controlling letter quotas, a single letter of more than one page in length was to be considered "a letter" or several letters. This inconsistency caused a particular problem for one of our complainants. He had been authorized by the unit staff to use six sheets of stationery. However, the three letters he wrote (one of four pages, and two of one page each in length) were returned to him. A Central Control check apparently determined that he had exceeded his quota of three letters for that week.

Based on the information obtained thus far, the Ombudsman came to the possible conclusion that while the practice established for issuing personal letters to inmates was not, in itself, unreasonable, this practice might have been administered unreasonably in the complainants' cases because the wording of the Institutional Standing Order governing this practice was not clear.

The Ombudsman reported his possible conclusion and a possible recommendation to the Superintendent of the detention centre, the Regional Director and the Deputy Minister. Because, in the Ombudsman's view, these persons might be "adversely affected", he accorded them an opportunity to make representations concerning his possible adverse report pursuant to Section 19(3) of The Ombudsman Act, 1975.

In response, the Superintendent of the detention centre agreed to amend the relevant Institutional Standing Order in a manner which would ensure that staff acted consistently when issuing stationery to inmates.

In view of the Superintendent's response, as well as the fact that the Ministry of Correctional Services was in the process of introducing writing paper that would permit inmates to use both sides of the paper, the Ombudsman was of the opinion that the complaints under investigation had been satisfactorily resolved, and reported accordingly to the complainants and to the Ministry.

DETAILED SUMMARY NO. 7

The complainant wrote to this Office from an institution in eastern Ontario.

One of our investigators subsequently travelled to that institution to interview the complainant regarding his allegations of unfair treatment. The complainant alleged that he had been charged with a misconduct for Attack or Threaten to Attack Another Person, when he himself had been the victim of an attack by another inmate.

After the Ministry received our notification of intent to investigate this complaint, an investigation was conducted by the Inspections Branch of the Ministry of Correctional Services. As a result of this investigation by the Ministry, the Deputy Minister of Correctional Services directed to the institution that ten days of Earned Remission be returned to the complainant.

The question of whether the misconduct should be removed from the complainant's file was raised with the Superintendent. He advised that the document could not be removed but that a letter could be added to the file reflecting that the misconduct would be nullified.

A document was also included in the file of the complainant nullifying the misconduct previously given to him.

DETAILED SUMMARY NO. 8

An inmate in an eastern correctional facility wrote to the Office of the Ombudsman contending that he was downgraded to Incentive Allowance Level 1 from Incentive Allowance Level 4, for allegedly being "unlawfully at large without excuse" pursuant to Section 133(1) of the Criminal Code.

Prior to the court proceeding, the complainant learned that he had not been downgraded based on his standard of conduct, industry and attitude within the institution. Subsequent to the complainant's court appearance, in which the charge was dismissed, the complainant found that he was in fact earning Incentive Allowance at Level 1.

The complainant advised that, on one occasion, upon his return to the correctional institution, he was considered by the institutional authorities to be absent from the institution without permission and was advised that he was on misconduct. The complainant was later informed that he had been downgraded from Incentive Allowance Level 4 to Incentive Allowance Level 1. This action was initiated by the Superintendent pursuant to Section J-1, page 3 of the Ministry of Correctional Services' Manual of Standards and Procedures which provides:

> "In the event that an inmate escapes or attempts to escape from an institution, the Regulations authorize penalties which include the withdrawal in whole or in

> part of privileges ordinarily earned by inmates. With this authority, a Superintendent may revoke the inmate's privilege of earning incentive allowance for a period subsequent to the misconduct. Penalties involving incentive allowance should, at no time, affect incentive allowance funds earned prior to an escape. Escapees will continue to be placed automatically in Level 1 of the incentive allowance program subsequent to their return to the institutional program."

Also, the Superintendent, pursuant to Section 29(1) of Ontario Regulation 243/79 made under The Ministry of Correctional Services Act, 1978, consulted with the local Crown Attorney to determine whether the case should be dealt with by the Crown Attorney under criminal law or by the Superintendent as a matter of internal discipline. This may be done where the inmate has allegedly committed a misconduct that also constitutes an indictable offence under an Act of Parliament. Subsequently, the complainant was informed that he would be charged in Provincial Court with being "unlawfully at large without excuse".

Our investigator advised the Superintendent, by telephone, of our intent to investigate pursuant to Section 19(1) of The Ombudsman Act, 1975, and also informed him that a confirming letter would be forwarded. Prior to the termination of the telephone conversation, the investigator referred the Superintendent to Section 29(2) of Ontario Regulation 243/79 made under The Ministry of Correctional Services Act, 1978, which provides:

> "Where a prosecution is commenced against an inmate by the Crown Attorney, all internal disciplinary action against the inmate relating to the alleged misconduct shall be discontinued."

In addition, the Superintendent was informed that the complainant's case was dismissed at court.

Subsequently, our Office received a letter from the Superintendent stating that the complainant would be reinstated to Incentive Allowance Level 4 retroactively to the date on which he was returned to this institution despite the fact that he had been absent from the institution without permission by the institutional authorities.

DETAILED SUMMARY NO. 9

This complainant wrote to the Ombudman concerning a refusal of the Ministry to grant him permission to mail a letter to the Federal Justice Minister without affixing postage.

During an interview with the complainant, the complainant indicated that legislation existed which permits anyone to send a letter to any Federal Minister or Department of the Federal Government without having to affix postage. Our investigation revealed the the Superintendent and his staff

were not aware of any such legislation and that the complainant was denied this right since the Ministry of Correctional Services' Manual of Standards and Procedures, stipulated that inmates must pay postage on all mail unless the inmate did not have an Incentive Allowance.

In accordance with the requirements of Section 19(1) of The Ombudsman Act, 1975, oral notification of our intent to investigate the complainant's concern was given to the Superintendent of the institution. The Superintendent confirmed the Ministry's policy that postage on all mail is paid by the inmates unless the inmate has no Incentive Allowance and is destitute. The investigator showed the Superintendent a copy of the relevant sections of The Post Office Act which specified certain types of mail which could be sent free of postage. The Superintendent suggested that he could not change Ministry policy, however, he agreed that this concern should be brought to the attention of the Deputy Minister of Correctional Services.

In accordance with Section 19(3) of The Ombudsman Act, 1975, the Ombudsman's possible conclusion and recommendation were set forth in a letter to the Deputy Minister of Correctional Services. The recommendation was that the Manual of Standards and Procedures be altered so that inmates be allowed to forward mail to a Minister or any Department of the Government of Canada postage-free.

A letter was subsequently received from the Deputy Minister of Correctional Services accepting the recommendation. Amendments were made to the Manual of Standards and Procedures to reflect an inmate's privilege to forward mail to a Minister of any Department of the Government of Canada free of postage.

Accordingly, the Office closed this file.

DETAILED SUMMARY NO. 10

This complainant wrote to the Ombudsman concerning a misconduct he received while incarcerated at a correctional facility in western Ontario. The complainant contended that he had been wrongfully identified as having participated in an inmate disturbance but nonetheless had forfeited his total Incentive Allowance and fifteen days Earned Remision.

The complainant was interviewed by an investigator and advised that the Ministry, on its own motion, had decided to reinstate his Earned Remission, but not his Incentive Allowance.

It was alleged by the complainant that he had concealed himself during the time of the disturbance. As the complainant contended that he was innocent of any involvement regarding the disturbance, he wished this Office to investigate the loss of his Incentive Allowance.

The Ministry was given written notification of our intent to investigate, pursuant to Section 19(1) of The Ombudsman Act, 1975.

Our review of the institutional reports concerning the disturbance revealed that three correctional officers had identified the complainant as a non-participant at the commencement of the disturbance. In response to our 19(1) notification, the institutional officials reviewed the complainant's involvement and concluded that his involvement in the disturbance "was no longer absolutely certain".

As a result of this Office's investigation into the complaint, the Ministry decided to return the Incentive Allowance standing to the complainant's credit.

DETAILED SUMMARY NO. 11

The complainant, an inmate from an institution in the western region, requested to speak to our investigator when he attended that institution.

His complaint was that he had not been granted parole pending further investigation. In essence, officials of the Ontario Parole Board would not grant him Parole until they had ascertained what deportation procedures the Canadian Department of Manpower and Immigration would follow. Furthermore, the Board wished to know as to whether he had outstanding charges in the United States.

The complainant could not understand the criteria on which the Board based its decision, in view of the fact that he had a written order from the Department of Immigration stating that he would be deported to the United States upon his release from custody. Furthermore, while incarcerated he felt that he had no opportunity to prove to the Parole Board that he had no outstanding charges in the United States.

Our investigator contacted an official of the Western Region Parole Board. He informed our Office that the Parole Board had contacted the Department of Immigration and that the complainant had been granted parole for deportation which would be effective within the next three weeks. Also, the official stated that the complainant would be officially advised of the Board's decision within a few days. Accordingly, we advised the complainant that his problem was resolved and closed our file.

DETAILED SUMMARY NO. 12

The complainant wrote to us from a correctional facility in western Ontario, contending firstly that the institutional authorities had lost mail which had been sent to him and secondly, that a substantial delay had occurred in providing him with dentures.

The complainant was interviewed, and he explained that he believed a letter had been received at the institution on the same day that he was transferred to another institution. Subsequently, when the complainant returned to the initial institution, the institutional authorities were unable to locate the letter and had apologized for losing it.

The investigator reviewed the mail log and raised the concern with the institutional staff involved. It was established that there was no record of incoming mail on the date in question but rather, there was a letter sent by the complainant on the date on which he was transferred. The correctional officers involved had erroneously advised the inmate that it was an incoming letter rather than one sent from that institution.

The complainant's second concern involved the delay in receiving his dentures. The complainant said he had three front teeth removed in mid-July of 1979. At that time the complainant paid $32.00 toward providing false teeth. A tentative appointment was made for the complainant in August, 1979 to take impressions for his false teeth. The dentist was unable to keep this appointment because of illness and was unable to return until November, 1979. The Ministry had made arrangements for a dentist from another institution to attend to any urgent dental concerns of inmates. Since the complainant's dental concern was not considered to be of an urgent nature, the taking of impressions and the subsequent providing of false teeth was delayed until the regular dentist returned.

The complainant was concerned that he had paid money toward the cost of his dentures and he was not going to receive them before his discharge date. The investigator advised the inmate that it was open to him to write and explain his concern to the Dental Consultant for the Ministry of Correctional Services. At the same time, the investigator advised the inmate that he would make inquiries with the institution and follow up the complainant's letter to the Ministry's Dental Consultant.

The subsequent investigation and contact with the Dental Consultant confirmed that the institutional dentist had been seriously ill and that the complaint was not considered to be urgent. Nevertheless the Dental Consultant made arrangements for impressions to be taken for false teeth and for the impressions to be sent to a commercial denture clinic for fast service rather than forwarding the impressions to the regular denture clinic for the Ministry. The consultant advised the investigator that the complainant would have his impressions taken, receive his false teeth and have any required adjustments made prior to his release date. The consultant indicated that he had forwarded a letter to the complainant explaining these arrangements.

Our investigator subsequently contacted the Ministry of Correctional Services who confirmed that all dental work had been completed.

MINISTRY OF

CULTURE AND RECREATION

ONTARIO ARTS COUNCIL

ONTARIO LOTTERY CORPORATION

DETAILED SUMMARY NO. 13

This complainant first wrote our Office on September 17, 1977, complaining of a decision rendered by the Ontario Arts Council.

He contended that the Council had unjustly denied an application for a grant made by the periodical he published, and that the Council had not afforded him the right to a hearing before the panel of judges who adjudicated his application, thus precluding him from stating his case in person or answering any questions that a judge might have. He also complained that the individual judges who compose a panel are not made known to an applicant. The applicant is therefore unable to ascertain if any individual judge is either properly qualified or may be biased against him.

The Ombudsman informed the Vice-Chairman of the Ontario Arts Council of his intention to investigate this complaint.

Our investigation included interviews with the complainant, the Director of Policy and Planning of the Ontario Arts Council, the Ontario Arts Council's Literary Film Officer, and the Secretary of the Canada Arts Council. In addition, the investigator corresponded with the British Columbia Arts Board and the Manitoba Arts Council.

The complainant applied for assistance in the Ontario Arts Council's periodical adjudications of both 1976 and 1977. Each year his application was assessed by a periodical panel comprised of 15 persons. This panel was divided into 5 sub-panels of 3 persons, each panel reviewing periodicals in 2 to 6 categories. One sub-panel was supplied with the complainant's application and sample issues of his periodical. Each panelist was asked to read the periodical, keeping the following criteria in mind:

a) consistent concern with artistic expression;

b) quality of writing and presentation, etc.;

c) contribution to the public at large and the particular field served; and

d) financial need as indicated on the application form.

The sub-panel met independently before the meeting of the whole panel, in order that consensus on the recommendation regarding each periodical reviewed by the sub-panel could be reached.

At the general meeting of the whole panel all recommendations regarding all the periodicals examined were discussed and debated. The comments of the panelists on each periodical were recorded by the Literary Officer in the form of brief unidentified quotations for later reference. The panel's grant recommendations were also recorded and subsequently presented to the Council as consensual recommendations of the full panel.

In both 1976 and 1977, the panel recommended to the Council that no grant be given to the complainant's periodical. The Council concurred with the panel's recommendation in each case, and the complainant was advised in a letter from the Vice-Chairman that his magazine was denied a grant, although no reasons were given.

The complainant was advised that if he wished to make further enquiries concerning the jury's comments, he could contact the Literary Officer. However, when asked, the Literary Officer did not provide details of the panelists' criticisms, only the overall consensus of the panel. Furthermore, the members of the panel were not identified. The complainant was hence of the opinion that he was not provided with adequate reasons for the denial of a grant.

An applicant who seriously disputed the Council's decision was advised that he or she could request an appeal of the decision by writing a letter to the Chairman requesting a review, and supplying any new or additional information. Accordingly, the complainant wrote to the Chairman requesting that the Council review its decision to deny his periodical a grant on the 1977 application. The Council reviewed the complainant's application but voted to uphold its earlier decision.

With respect to the complainant's contention about disclosure of panelists' names, the Ontario Arts Council advised that although the names of the adjudicators are included in the overall list of advisors and consultants printed in the Council's Annual report, it was only by ensuring the anonymity of its adjudicators that it was able to secure the services of experts on its panels. However, the investigator learned that both the Canada Arts Council and the Manitoba Arts Council do release the names of adjudicators to applicants at the completion of a competition and neither jurisdiction claimed to have any difficulty in finding adjudicators.

The Ontario Arts Council stated that if the panelists' names were released, the panelists would be reluctant to give "honest" and "accurate" opinions of the work being assessed. However, the contrary argument was made that if the panelists knew their names would be released, they would be more "conscientious" in their decisions.

After a careful examination of the available evidence, the Ombudsman formed the view that it was open to him to conclude that the Ontario Arts Council was "unreasonable" within the meaning of Section 22(1)(b) of The Ombudsman Act, 1975, in omitting to provide complete details to applicants of the reasons for denying them grant applications, and in not providing to applicants the names of the panelists after the competition has taken place. Accordingly, he reported his possible conclusions to the Vice-Chairman, together with his possible recommendations that after an adjudication has been completed, the names of the panelists should be released, and that details of the reasons for the denial of a grant should be given to unsuccessful applicants.

Because, in the Ombudsman's view, the Council might be "adversely affected" by his possible conclusions and recommendations, he accorded to the Council the opportunity to make representations respecting the possible adverse report. Representations were received on behalf of the Council by

letter dated July 31, 1979, in which the Council stated its willingness to implement the Ombudsman's possible recommendations.

Having reviewed the Council's representations, the Ombudsman was of the view that the intended course of action was a satisfactory resolution to the complainant's contentions and that no further action was required by our Office.

DETAILED SUMMARY NO. 14

This complainant wrote to us complaining that the Ontario Lottery Corporation had revoked his licence to purchase and sell Wintario and Provincial lottery tickets as a retailer after criminal assault charges were laid against him. The complainant was of the view that as he had not yet been convicted, but merely charged with common assault, his licence should be reinstated until he is found guilty by a court of law.

The Ontario Lottery Corporation markets its tickets by a system of independent distributors who select their own retailers who in turn receive authorization certificates from the Corporation.

At the time the complainant received his original retailer's licence he was selling within the territory granted by the Corporation to an authorized distributor from whom he purchased all his lottery tickets. Later, however, in conjunction with the launching of the Provincial lottery, the Corporation conducted a major reorganization of the distributorship territories, re-drawing territorial boundaries and creating new territories. This resulted in the complainant having to purchase his tickets from another wholesaler whose territory now covered the area in which he carried on his retail operations. That company's manager suspected that the complainant was retailing tickets which had not been purchased wholesale from his company, thus violating the Ontario Lottery Corporation marketing procedures. An altercation ensued when the company's salesman visited the complainant to deliver tickets and found that the complainant had already purchased his supply elsewhere. The incident resulted in criminal charges of assault being laid against the complainant.

Shortly thereafter, the complainant received a letter from the Marketing and Sales Manager of the Ontario Lottery Corporation advising him that his selling licence was temporarily suspended until the charges had been resolved. The complainant wrote to the Corporation requesting that his licence be reinstated but the Board refused.

When the complainant came to trial, the party who had laid the charge failed to appear, and the Crown withdrew the charges. During the month following the trial, the Board of Directors of the Corporation met and decided to reinstate the complainant's authorization as a retailer.

The Ombudsman noted that the authorization was never revoked by the Corporation, but was merely suspended. Nor did the complainant appear to have suffered any significant monetary loss as a result of this suspension.

However, during the course of the investigation, it appeared to the Ombudsman that there might be sufficient grounds for making a report or recommendation which might adversely affect the Ontario Lottery Corporation and its Marketing and Sales Manager. As a result, and in accordance with Section 19(3) of The Ombudsman Act, 1975, letters were sent to the Chairman of the Board of Directors of the Ontario Lottery Corporation and to the Corporation's Marketing and Sales Manager, giving them the opportunity to make representations to the Ombudsman concerning the possible adverse report.

Further, it appeared to the Ombudsman that it might be open to him to conclude that the suspension on the basis of the criminal charges alone was, within the language of Section 22(1)(b) of The Ombudsman Act, 1975 "unreasonable, unjust, (and) oppressive".

The Corporation made oral and written submissions through its counsel. In its submissions the Corporation took the position that the complainant's authorization was not suspended on the ground that he was charged with a criminal offence, but because of his refusal to buy tickets from the distributor within whose territory his retail outlet was located. The Board also indicated that it did not wish to associate the Ontario Lottery Corporation with the kind of violent and unseemly activities that had occurred in this case.

In the Ombudsman's view, the suspension of the complainant's authorization as a retailer had to be placed in its proper context. Although the Ombudsman accepted both the Corporation's concern that the complainant was not complying with its marketing requirements, and the possibility that the incident might reflect badly on the Ontario Lottery Corporation, he nevertheless was of the view that, based on the language of the letter from the Marketing and Sales Manager of the Ontario Lottery Corporation to the complainant, the latter concluded quite reasonably that he had been suspended on the ground that he had been charged with a criminal offence. It also was the Ombudsman's understanding that the Corporation's Marketing and Sales Manager had acted without legal advice and without consulting the Board of Directors and that this action had been confirmed by the Board a short time later.

The Ombudsman believed the real matter in issue in this investigation to be whether the Corporation ought to have taken steps to suspend the authorization without first granting the complainant a hearing. The Corporation submitted that the retailer's authorization is not a licence in the legal sense and, therefore, the complainant had no right to a hearing.

It is difficult to characterize in legal terms the authorization which denotes someone as an "authorized retailer of the Ontario Lottery Corporation". The certificate provides some proof that the holder is selling lottery tickets in accordance with a lottery scheme established by the province, and so affords the protection available under Section 190 of the Criminal Code. In addition, only authorized retailers are eligible to receive bonuses for selling winning tickets. Thus, by suspending the complainant's authorization, first the Corporations' Marketing and Sales Manager, and then the Corporation, did mean to impose some sanction upon the complainant, albeit temporarily.

Furthermore, although there is no provision in The Ontario Lottery Act, 1974 and the Regulation expressly forbidding sale of the Corporation's lottery tickets to the public by anyone other than an authorized retailer, the provisions which are in force seem to demand that tickets be marketed by persons who are authorized to do so. While it may be true that the selection of retailers is left in practice to the distributors, who constitute the cornerstone of the Corporation's marketing system, the authorization granted by the Corporation to retailers implies some control of marketing procedures by the Corporation in respect of retailers, consistent with the legislative provisions. At the very least, the certificate of authorization indicates that the Corporation has given its sanction and approval to the holder who thereby has the legal authority to act as a retailer of the Corporation's lottery tickets.

Therefore, the Ombudsman concluded that the Corporation, in order to act fairly when considering the suspension of a retailer's authorization, should allow the retailer some opportunity to put forward his position before taking the action to suspend.

To grant such an opportunity would not be any great inconvenience to the Corporation, given how rarely circumstances arise in which the Corporation is required to consider suspending or revoking an authorization. Nor is a formal hearing, with all that it implies, called for here. It would have been enough to let the complainant know what the concerns of the Corporation were, as well as what sanction the Corporation was considering imposing if those concerns were not met satisfactorily by the complainant, and to have allowed him to respond. This could have been accomplished informally. If the primary concern of the Corporation was the complainant's alleged non-compliance with its marketing procedures, then in the Ombudsman's opinion, affording him a chance to tell his side before action was taken to suspend his authorization would not necessarily have prejudiced the complainant in his defence to the criminal prosecution instituted by the salesman.

Accordingly, the Ombudsman concluded, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the act of suspending the complainant's authorization as a retailer of the Ontario Lottery Corporation was "unreasonable", in that the act was done without affording the complainant any opportunity to respond to the concerns of the Corporation prior to the suspension. However, in forming his opinion, the Ombudsman did not conclude that the concerns which the Marketing and Sales Manager and the Corporation had in mind were improper, or that they had acted in any way in bad faith.

Hence, it was the Ombudsman's recommendation, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that in future the Ontario Lottery Corporation or its officers afford a reasonable opportunity to be heard to the individual whose authorization the Corporation is proposing to suspend or revoke before acting to carry out the proposal. In view of the reinstatement of the complainant as an authorized retailer of the Corporation, and in view of the insignificant financial loss the supsension had occasioned him, the Ombudsman was of the view that no further recommendation was appropriate in this case.

Following receipt of the Ombudsman's report, the Managing Director of the Ontario Lottery Corporation wrote the Office confirming the reinstatement of the complainant and advising the Ombudsman that in future cases the Corporation would follow the recommendation made by him, provided that it is possible to establish contact with the individual, withdrawal of whose licence is being contemplated.

MINISTRY OF

THE ENVIRONMENT

DETAILED SUMMARY NO. 15

This complainant wrote to our Office in January, 1978 complaining that a subcontractor working for the Ministry of the Environment damaged trees, shrubs, outside stairs and an electrical sign on the front of her cottage. She contacted the engineer working on the project and agreed to waive the loss of the electric sign and the expense for electrical and plumbing repairs if the company would replace the stairs. The subcontractor replaced the damaged stairs with another set. In September of 1977 the complainant wrote to her M.P.P. complaining that the stairs installed were unsatisfactory because they were a second-hand set, unattractive, and they were unstable.

Her M.P.P. referred her to the Ministry of the Environment which denied liability and referred her to the subcontractor's insurer. Her M.P.P. then advised her to take legal action if she was unable to obtain a settlement.

The complainant contended that the Ministry has a responsibility to supervise contracts which it lets out and felt that the Ministry had not accepted its responsibility. She agreed to settle for a good set of stairs installed by a contractor of her choice.

The Ombudsman informed the Deputy Minister of the Ministry of the Environment on March 21, 1978 of his intention to investigate this complaint.

Our investigation indicated that the Ministry let a contract to a subcontractor for the construction of sewers in the township. The Ministry required the subcontractor to take out liability insurance which he did. It appeared that during the construction of the sewers a number of properties were damaged.

In January, 1978 the subcontracting company, through its solicitor, requested that the insurance company settle some seven claims outstanding against the project. However, in this case the subcontractor chose to replace the damaged stairs rather than refer the matter to the insurer.

Our investigator visited the complainant on October 8, 1978 to examine the replacement set of stairs that were provided by the contractor and confirmed that the replacement stairs were pre-used.

During the course of our investigation it appeared to the Ombudsman that it might be open to him to conclude that the Ministry had acted in an "oppressive manner" within the meaning of Section 22(1)(b) of The Ombudsman Act, 1975 in declining to ensure that the complainant was fully compensated for the damages and by merely referring the complainant to legal remedies against the contractor.

Thus, the Ombudsman made the tentative recommendation in accordance with Section 22(3)(g) of The Ombudsman Act, 1975:

"That the Ministry accept the responsibility for compensation of or otherwise make good the losses."

Since the Ombudsman felt that the Ministry might be "adversely affected" by his possible conclusion and recommendation, he accorded to the Ministry the opportunity to make representations respecting the possible adverse report pursuant to Section 19(3) of The Ombudsman Act, 1975.

Representations were received on behalf of the Ministry by letter dated December 10, 1979. The Ministry stated that it was its information that the stairs and shrubs which were damaged were located partly within the road allowance and partly on the complainant's property and that the damaged sign was entirely on the road allowance. It was the Ministry's position that it had no obligation to restore features that are privately owned and are within the road allowance without the consent of the municipality: however, its policy is to make reasonable restoration unless directed otherwise by the municipality. The Ministry took the position that the damaged stairs were replaced with stairs which appeared to the consulting engineer to be satisfactory and, to the best of his knowledge, of equivalent quality to the original stairs, and, that to the best of the consulting engineer's knowledge, reasonable restoration of the vegetation was made. It denied liability for the damaged sign as it was installed on the road allowance without the approval of the municipality.

Specifically, in respect of the stairs, the Ministry stated that it appeared that the lower portion of the stairs was located on the complainant's property whereas the upper portion was located on the road allowance. Apparently the lower portion may have been disturbed as a result of a necessary disruption of the upper portion. In such a case the Ministry was of the opinion that there would be no negligence on the part of its contractor. Nevertheless it was pointed out the contractor did replace the stairs.

The Ministry's letter concluded with the statement that it had no legal liability to the complainant. However, as it was possible that the vegetation referred to was not restored to a condition equal to the original, the Ministry was prepared to make an offer of $75.00 in final settlement of all outstanding claims as a gesture of goodwill.

Subsequently the complainant confirmed to our Office that the settlement proposed by the Ministry was acceptable to her and accordingly the Ombudsman terminated his investigation of this complaint and the file was closed.

MINISTRY OF

HEALTH

DETAILED SUMMARY NO. 16

The complainant wrote to this Office and referred to legal action he attempted to take against a central Ontario mental health facility. His lawyer had advised him that the time had expired within which actions against the mental health facility and its doctors might have been commenced. The complainant requested the Ombudsman to investigate his complaint.

The Deputy Minister of Health was advised by letter, pursuant to Section 19(1) of The Ombudsman Act, 1975, of the Ombudsman's intention to investigate the complainant's claim, that a doctor had compelled him to take a drug (Antabuse), the effects of which caused a degree of permanent disability, so that he was incapable of resuming his former occupation as a casual labourer; the complainant contended he should be compensated for his loss of income due to this disablement.

The Deputy Minister stated his position with respect to this complaint, following which the complainant's file was assigned for further investigation. Information was obtained from a community hospital, the mental health facility and from a neurologist who administered a physical treatment program for the complainant. This neurologist reassessed the complainant's condition at the request of the Ombudsman. This assessment included electromyographic and nerve conduction studies. The Ombudsman retained the services of a specialist in clinical psychopharmacology to advise him on the indications for the prescription of Antabuse in the complainant's case. The information resulting from this investigation was ultimately subjected to thorough legal research.

In his reply to the Ombudsman's notice of intent to investigate this complaint, the Deputy Minister of Health said he was advised by his staff that the complainant had a long history of aggressive behaviour relating to alcohol abuse. He took the position that the complainant had agreed to take Antabuse as a deterrant to his involvement with alcohol. The Deputy Minister stated that "at no time was there any observation that would indicate any type of disability of this man in relationship to the side effect of the medication".

This Office's investigation revealed that the complainant had been charged with a criminal offence and was said to have been under the influence of drugs when he committed this crime. At his trial, he was found not guilty by reason of insanity and thereafter detained, under a Warrant of the Lieutenant Governor, in a secure psychiatric unit. Eventually, an Order-in-Council permitted the complainant's transfer to the central Ontario community mental health facility.

The complainant was said to have displayed evidence of intoxication on two occasions following his transfer to this facility. During one of these episodes he broke a window. Because of these incidents, his attending physician ordered that 0.5 grams of Antabuse be administered to him each morning.

The complainant subsequently reported, over a two-month period, tiredness, headaches, chest pain and general weakness, which he attributed to the Antabuse. He refused to go to work and wished to speak to his attending physician with a view to having the Antabuse discontinued. The nursing staff recorded that they contacted the attending physician, who made six recommendations concerning the complainant's treatment program. One of these was written as "he is to take the Antabuse without fail". Another was stated as "if (the complainant) does not abide by these recommendations, he will be immediately transferred to (a secure psychiatric unit)". Later, the complainant, in a personal interview with his attending physician, requested the Antabuse be discontinued. The attending physician wrote that he "discussed this with (the complainant) at length and suggested that he continue with Antabuse. During the instances where he got himself into problems with staff and administration it would appear that alcohol has been a motivating factor...".

Two months later, the nursing staff recorded that the complainant was "not feeling well because of flu symptoms and sore legs". The complainant missed a week's work. He was seen by a medical consultant who ordered x-rays. The x-rays were reported as negative for any pathology. About two weeks later, the attending physician noted the complainant's reports of continuing foot pain. He again referred the complainant to a medical consultant who, in turn, arranged an appointment at the orthopaedic clinic of a community hospital. The complainant was admitted to the neurological service of this hospital for an investigation of his medical condition. This resulted in the finding that the complainant had "a progressive peripheral neuropathy which is compatible with a diagnosis of disulfiram (Antabuse) neuropathy".

The neurologist stated that following the complainant's attendance as an outpatient at the neurology clinic of the community hospital for about three months, there "had been considerable improvement" (but) "there was, nevertheless, some weakness of the small muscles of his hands and of the lower leg and feet". After his updated assessment, the neurologist reported to this Office that:

> "The diagnosis is considered to be peripheral neuropathy probably secondary to disulfiram (Antabuse). He has residual weakness of his ankles which would explain his difficulty walking over irregular surfaces. It is now eighteen months since the onset of his neuropathy. Although further recovery might occur, it is most unlikely.
>
> In my opinion, therefore, he will continue to have a residual functional disability (I estimate that he has lost twenty percent of normal function). He should be able to work at light jobs (e.g. interior decorating), but would be expected to have difficulty on rough ground (e.g. as in construction) and should not work at heights."

The specialist in clinical psychopharmacology, retained by the Ombudsman, advised that the use of disulfiram on a compulsory basis for

such a patient was a reasonable tactic. He stated there was evidence that disulfiram in such situations could force abstinence from alcohol. He described other aspects of disulfiram pertinent to the complainant's case. He said the drug was "believed" by therapists and patients to be a far more effective deterrant than had actually been demonstrated; the relatively high frequency of side effects of the drug at a dose of 0.5 grams daily was not widely appreciated because most patients did not take the drug as recommended; in the complainant's case, he probably was at increased risk to the toxicity because he was required to take the drug; patients administered disulfiram should have a full examination of the cardiovascular system, liver and neurologic systems prior to starting the drug and every four weeks thereafter.

The Ombudsman's advisor concluded that in the complainant's case, the choice of therapy was reasonable but certainly coercive because the complainant was told he could not remain at the central Ontario community mental health facility unless he took the drug. The Ombudsman's advisor was of the oinion that the therapy was not improperly discriminating since the complainant appeared to have had the problem for which the drug was alleged to be effective. However, he felt that had the complainant been more carefully monitored, with an awareness of the potential for toxicity, the adverse effect could possibly have been averted. Nonetheless, the Ombudsman's advisor also thought that the complainant's management, while short of the optimal, was representative of the current practice when this drug was administered.

In his report to the complainant and to the Deputy Minister of Health, the Ombudsman concluded that the action complained of was not "unreasonable, unjust, oppressive, or improperly discriminatory" in the complainant's case. Nevertheless, the Ombudsman felt it might serve a useful purpose if the comments made by his expert advisor, about the effectiveness and side effects of Antabuse, as well as the requirement for a full examination before and during the use of this drug, were disseminated as widely as possible to medical personnel within the provincial psychiactric hospitals network.

The Ombudsman suggested that the Deputy Minister of Health consider the circulation of a general memorandum to illustrate the precautions that the specialist in psychopharmacology had suggested to reduce the possibility of adverse effects on patients in circumstances similar to those of the complainant.

The Deputy Minister of Health replied that his staff were in agreement with the Ombudsman suggestion and were preparing a suitable memorandum in consultation with the psychopharmacologist who had advised the Ombudsman on this matter. The complainant was informed by letter that the Ombudsman's suggestion had been accepted.

MINISTRY OF

HOUSING

ONTARIO HOUSING CORPORATION

DETAILED SUMMARY NO. 17

A letter of complaint was received contending that an Eastern Ontario Housing Authority had refused to provide geared-to-income housing for the complainant and his family, who were living in an uninsulated four room dwelling with no central heating, for which they paid $144.00 per month in rent. Heat was provided by a space heater and the electric stove. The owner of the house had informed the complainant that his tenancy was to terminate as the house was to be demolished. This family's income is provided by the County Social Services Department, the complainant is illiterate, and he and his wife both suffer from medical problems.

The Ombudsman wrote to the Chairman of the Housing Authority to advise him of his intention to investigate this complaint. The reply indicated that the Housing Authority had exercised its right to choose tenants who would best profit from geared-to-income housing, and that the decision not to house this family was based on the following reasons: housekeeping habits much below acceptable standards; reported hygiene problems; reported drinking problems; suspected problems of drugs, theft, and mischievousness; child abuse; school attendance problems; the fact that some problems had been present for some time; and the fact that the family made little effort to improve their living quarters.

During the course of the investigation all appropriate people were interviewed and all relevant documentation was obtained, revealing the following.

The complainant's home was relatively neat, clean and free of unpleasant odors considering its deplorable physical condition, and no unhygienic conditions were observed. The complainant admitted that he drinks, and sees an addiction counsellor once a week. However, the counsellor would not qualify the complainant as being an alcoholic. No written statements were contained in the Housing Authority's file regarding the alleged problems of drugs and mischievousness, nor was there any indication that follow-up measures were taken. No information was available (in the Housing Authority's file) to substantiate a child abuse problem and those who were interviewed all stated having observed no signs of abuse in the children. The investigator learned that there had, at one time, been a problem of school absenteeism. However, for three months beginning in September 1979, the complainant's three children attending school had altogether missed only one and one-half days.

The investigation revealed that this family has a history of problems related to a lack of adequate housing. However, reports from the social workers involved indicate that since February 1979, they have made considerable progress, but the continuing problems are largely due to the fact that the family does not have adequate living facilities.

Although the Housing Authority had stated that this family made no effort to improve its living quarters, the investigation revealed that the complainant's wife regularly cleaned the house, but her efforts were not noticeable due to the run-down condition of the property. It was observed that the complainant had made some repairs, but in many instances he could

not afford the necessary parts and supplies, and felt it fruitless to put a great deal of effort into a house which was destined for demolition. In the circumstances, it seemed reasonable to the Ombudsman for the complainant to be reluctant to invest money in a house which was to be demolished, especially in view of his limited financial means. The owner of the house stated that the complainant had been a reliable tenant, paid his rent on time, had never been in arrears, and had never caused any wilful damage to the premises.

The Ombudsman's Office obtained a copy of a letter from a Family Court Judge addressed to the Director of the area Children's Aid Society, a copy of which was sent to the Housing Authority stating that providing adequate housing to this family is a priority. A copy of a letter addressed to the Housing Manager from the Administrator of the area Social Services Department was also obtained, asking whether it would be possible for the Housing Authority to reconsider the complainant's application for housing, as his only alternative at that time would be motel accommodation.

During the course of the investigation, the Ombudsman formed the following possible conclusion and recommendations and, as required by Section 19(3) of The Ombudsman Act, 1975, he reported his possible conclusion and recommendation to the Chairman of the Housing Authority as follows:

> Possible Conclusion
>
> It would appear that it may be open to me to conclude that the . . . Housing Authority was 'unreasonable' as set out in Section 22(1)(b) of The Ombudsman Act, 1975, in continuing to defer the . . . family's application for a geared-to-income housing unit.
>
> Possible Recommendation
>
> It would appear that it might be open to me to recommend, in accordance with Section 22(3)(g) of The Ombudsman Act, 1975, that the . . . Housing Authority provide a suitable housing unit to the . . . family as soon as possible.

Representations received by letter from the Housing Authority's Chairman which indicated disagreement with the possible conclusion and recommendation were given careful consideration by the Ombudsman.

The Ontario Housing Corporation's "Field Manual - Policies and Administration" states that home visits must not be made on a surprise basis, and that appointments must always be made. The investigation revealed that this family was not given any notice prior to two home visits which were made to their house, and this was explained by the Housing Authority as being due to the fact that the family has no telephone, although mail delivery is made to the house. The manual also indicates that where there is a housekeeping problem which cannot be resolved through

discussion, the applicant should immediately be referred to a suitable social agency, and that a relationship with such an agency may allow for support which will reduce social problems when the applicant becomes an O.H.C. tenant. The investigation revealed that this family was not referred to any social agency by the Housing Authority but that assistance was provided to them through the initiative of other agencies and the family itself.

The Housing Authority was quite concerned and convinced that the anti-social behaviour of certain members of this family could very well be detrimental to other tenants. However, no concrete evidence of anti-social behaviour, other than specific allegations already referred to, were evident.

The Housing Authority responded to the investigator's findings regarding the condition of the house by stating that it had reason to believe that extra help was given to the family. No reasons were set out for this belief, and the Ombudsman could only conclude that it was based on conjecture.

The Housing Authority went on to state that in the past, social service agencies had promised to assist, but their services were discontinued shortly after tenants were housed. The Ombudsman was of the opinion that it was unfair of the Housing Authority to apply its previous experiences to this particular family. Some of the social agencies had been involved with this family since 1976, and the investigation revealed a strong commitment to the family on the part of these agencies. The Ombudsman had no reason to believe that they would abandon the family should it be given an O.H.C. unit.

The Housing Authority went on to apply generalizations based on its previous experience to this specific case stating that it had had experiences with families with similar social problems, resulting in considerable costs for the Authority. The Housing Authority also stated that serious problems had arisen because too many multi-problem families were housed. The Ombudsman was of the opinion that this family should not be prejudiced by the undesirable behaviour of previous tenants and he reminded the Housing Authority that it had the same right, under The Landlord and Tenant Act, to evict tenants for cause as does every other landlord in the province of Ontario.

Concerning the involvement of the Children's Aid Society, there seemed to be some confusion with regard to the purpose and nature of a supervisory court order obtained from Family Court. Such an order simply ensures that the Children's Aid Society will be allowed to closely monitor the family and does not indicate mistreatment or abuse of the children, as suggested by the Housing Authority.

Regarding absenteeism, the Housing Authority stated that hygiene problems remained due to poor hygienic practices. However, absences of the children had been related to poor hygienic conditions caused by unacceptable housing conditions.

The Housing Authority also stated that the mother was unable to give adequate care, and in an informal conversation with the Housing Authority's home visitor, a nurse-hygienist from the area Health Unit expressed concern

whether the mother would ever be able to cope. The nurse-hygienist's written statement mentioned that this family could not continue their progress in their current living conditions, and that the mother had difficulty in providing adequate care in those circumstances. The Ombudsman stated that the nurse-hygienist had in no way suggested that the mother was unable to give adequate care. With regard to the statement made to the home visitor, this incident was mentioned to the investigator. There was, however, no official written statement supporting any such oral statement. It was the Ombudsman's opinion that little weight should be given to a comment which may have been a casual, off-the-cuff remark, rather than a considered professional opinion. The Ombudsman also indicated his concern that the Housing Authority would give weight to such a condemning remark that had been reported to it secondhand by the home visitor.

Regarding the Housing Authority's comments on the letter written to it by the addiction counsellor, the Ombudsman had not attempted to deny the existence of an alcohol related problem, and the fact that such a problem had been recognized as existing surely explained the involvement of an addiction counsellor. The Ombudsman also felt that the fact that the complainant consulted such a counsellor should not be considered a liability, but rather the Housing Authority should have considered it to be to his credit. The Housing Authority stated that the involvement of the addiction counsellor was related to concern for the children. The addiction counsellor's letter stated that the referrals were made with the children in mind. The addiction counsellor became involved on two occasions through two other social workers who were primarily concerned with the children. The Ombudsman noted that this surely does not mean that the involvement of an addiction counsellor was necessary to the safety of the children. Certain of the points made in the Housing Authority's representations consisted of disjointed quotations taken from the addiction counsellor's letter to the Housing Authority and the Ombudsman found it difficult to respond to these points as the intent in raising them was obscure. The Ombudsman also emphasized a statement made by the addiction counsellor to the effect that any obstacles which had been encountered were not due to any lack of cooperation on the part of the complainant or his family, but were due to the problem of housing.

The Ombudsman was of the view that the Housing Authority had given insufficient weight to comments of the social workers who unanimously stated that a lack of adequate housing was the root of the family's problems. The Ombudsman was also of the opinion that the Housing Authority had taken insufficient note of the progress which the social workers stated had been observed in the family.

The Housing Authority's representations also mentioned that the problems of drinking and drugs had been discussed at two meetings. However, no reports of such meetings were evident in the Housing Authority's file, and the nature and results of any such meetings were not told to the investigator. The Ombudsman was not aware of any arrests of members of the complainant's family for drug related offences.

With regard to the problems of theft and mischievousness, the Housing Authority stated in its representations that other minor incidents and mis-

chievousness had been verbally reported but that only two such incidents were related to the investigator. The Authority did not provide any further information regarding these incidents. The Ombudsman later learned that one of the complainant's children had been convicted of theft, fined and placed on probation. To the Ombudsman's knowledge, this was the only conviction recorded against a member of the complainant's family.

Concerning the reported problem of child abuse, the Ombudsman's investigation revealed that there was only one incident of abuse. This occurred in early 1979, when a friend of one of the complainant's children reported to the complainant that his son was attempting a break-in. When the child came home, the complainant took what he stated to be disciplinary measures, causing bruises on the child's arms and legs. The complainant admitted to the investigator that the severity of these measures was due to the fact that he had been drinking. He then sought the help of the Children's Aid case worker, as he recognized that his drinking was causing problems, and was referred to the addiction counsellor. None of the social workers or the family physician had ever noticed signs of abuse resulting from any other incident. As a result of this incident, custody of the child, aged 12, was awarded to the Children's Aid Society further to the complainant and his wife signing a Temporary Care Agreement. This was not done subsequent to a court order but rather the complainant and his wife voluntarily signed the agreement. The child was placed in a foster home for a maximum period of three months, but due to a very favourable change in the family, was returned after three weeks. The family physician stated that the children were very well fed and looked after, and the Children's Aid Society's case worker mentioned that there are very strong family ties.

The Housing Authority stated that at a meeting a comment was made to the effect that supervision by the Children's Aid Society seemed to have been successful. Notes made by the Housing Manager regarding such a statement were provided to the investigator, but were in rough, handwritten form, and did not specify who made this comment. The child care worker had offered to present his views to the Housing Authority at one of its meetings, but it was made very clear to him that these meetings were private. He was not, at any time, invited to present the viewpoint of the Children's Aid Society to the Housing Authority.

The Housing Authority also brought up the question of the complainant and the agencies involved with him and his family having dealt with the mass media to exert pressure. The Ombudsman felt that the fact that the complainant and the social agencies had recourse to the news media had no bearing on their need or eligibility for housing, noting that the Housing Authority had also made public statements to the press in defence of its position.

The Housing Authority also stated that it had difficulty in ascertaining the number of family members living at home. The investigator, however, determined that the family consisted of two parents, three children attending school, and one child working. The Housing Authority had relied on television and newspaper reports which seemed to have caused some confusion regarding family composition, but this could have been cleared up had the Authority contacted the complainant.

The Housing Authority stated that false accusations had been made and that it was accused of not considering the opinions of the social agencies involved with the complainant and his family. The Ombudsman gave the Housing Authority every opportunity to respond to his possible conclusion and recommendation and to express its opinion in this matter. The investigator had earlier given the Chairman and the Housing Manager of the Housing Authority an opportunity to present every facet of the Authority's position.

The Ombudsman was of the opinion that the Housing Authority had failed to justify its decision to continue to defer the complainant's application for housing. The Authority had acknowledged the family's needs and had declined to provide housing on the sole ground that the family's social problems made them undesirable tenants. This had not been borne out by the statements of the numerous social workers involved with the family, who report that the family is making progress and that further progress is unlikely unless adequate housing is provided.

Therefore, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, the Ombudsman recommended that the Housing Authority give the complainant immediate accommodation in a suitable geared-to-income housing unit; and if a suitable unit is not available, that the Housing Authority accommodate the family in the first unit which becomes available.

The Chairman of the Housing Authority responded to the Ombudsman's final report rejecting the conclusion and recommendations.

Pursuant to Section 22(4) and 22(5) of The Ombudsman Act, 1975, a copy of the Ombudsman's report and recommendations was forwarded to the Premier. The complainant was notified that his complaint would be included in the Ombudsman's next report to the Legislature for the consideration of the Assembly.

DETAILED SUMMARY NO. 18

This complaint was made by C Limited, a building supplies company concerning a refusal by the Ontario Housing Corporation (OHC) to pay C Limited's claim made under The Public Works Creditors Payment Act.

In 1972 C Limited supplied building materials to a contractor working on Ontario Housing projects. The contractor became indebted to C Limited. When the contractor became insolvent, C Limited filed a claim under The Public Works Creditors Payment Act for compensation. A hearing was held and the hearing referee recommended that C Limited be paid $36,196.57, providing that C Limited fulfilled certain obligations. The directors of OHC refused payment.

In June of 1971 C Limited began to supply lumber and building materials to W Limited. W Limited was involved in the construction of modular housing units. These units were then sold by W Limited to E Limited. E Limited used the modular units in the construction of an OHC housing project. E Limited was the contractor retained by OHC to build the

project. Both W Limited and E Limited were controlled by the same man, Mr. X. In 1972 Mr. X became insolvent. At that time C Limited's outstanding account with W Limited was approximately $145,000.00 for materials supplied to W Limited. When E Limited became insolvent, all the creditors involved in the OHC project filed mechanics' liens against OHC and The Public Works Creditors Payment Act claims. The mechanics' liens were void as the Crown was exempt from the operation of The Mechanics' Lien Act. C Limited filed a Public Works Creditors Payment Act claim against W Limited and E Limited in the amount of $145,000.00.

OHC organized a hearing to settle the claims made against it. The Hearing started on January 25, 1973 and was chaired by a referee appointed by OHC. C Limited was represented by counsel. There was no statutory basis for holding this hearing. It was entirely an administrative act on the part of OHC to expedite the claims against it. The referee had no authority to take evidence under oath so all oral testimony was taken unsworn. All parties involved had counsel present, and counsel were permitted to cross-examine claimants who gave evidence with respect to their claims.

The original claim filed by C Limited was for $145,000.00, but was subsequently amended at the hearing to $41,115.48. After assessing the claim, the referee determined that the proper amount of C Limited's claim should be $36,196.57. Criminal charges were laid against Mr. X and another flowing from the insolvency of Mr. X's companies. Mr. X was acquitted of all charges, and the reasons for judgment were reviewed by the Ombudsman as part of his investigation.

Several significant issues were raised during the course of the hearing. One issue related to a mortgage given to C Limited by a third company, S Limited, owned by Mr. X. On September 7, 1972 C Limited registered this mortgage as a third mortgage given by S Limited in the amount of $175,000.00. The mortgaged property was owned by S Limited. The mortgage was intended as consideration for C Limited's forbearance on the existing outstanding debt owed to C Limited by S Limited and W Limited. As well, the mortgage was to secure further advances of credit by C Limited to W Limited.

Mr. X, the owner of W Limited, E Limited, and S Limited, gave evidence at the referee's hearing that there would be sufficient equity in the mortgaged property to pay the face value of the mortgage, including The Public Works Creditors Payment Act claim. The Vice President of C Limited gave evidence at the hearing relating to the mortgage, and when cross-examined about the mortgage the Vice President stated he was under advice from his counsel to refuse to give particulars of the mortgage or the circumstances surrounding the mortgage. The Vice President stated the mortgage was going to be litigated and he was not going to answer questions, as he did not wish to afford opposing counsel an opportunity for discovery on issues concerning the mortgage.

In his report to OHC the referee stated he believed he had no power to penalize C Limited's Vice President or order him to answer questions. The referee believed he was obliged to accept the available evidence given by Mr. X, and found as a fact that there was sufficient equity in the charged property to meet the face value of the mortgage. OHC accepted this

portion of the referee's report and based its decision on the same finding of fact. It was apparent to the Ombudsman that the referee also considered the mortgage to be collateral security and that the mortgage should not in itself prevent payment of C Limited's claim which the referee found to be valid. The referee stated as follows:

> "The next consideration is whether or not the taking of collateral securities and the refusal to testify should affect payment of the claim."

Another issue which was also relied upon by OHC to disallow the claim related to the nature of the referee's recommendation with respect to C Limited's claim. The referee believed that C Limited obtained the mortgage from S Limited with respect to W Limited's indebtedness to C Limited. The referee stated in part that "...as the Crown appears to have a discretion not to pay the claimant, it would be inequitable for the Crown in this particular case to unconditionally pay the claimant." The referee then recommended payment to C Limited's claim in the amount of $36,196.57 subject to three conditions. These conditions required C Limited to firstly seek all available remedies under the mortgage in good faith; secondly, that all monies realized were to be applied to the debts between the contractor, W Limited and the claimant, C Limited, in accordance with the rule in Clayton's case; and thirdly, that after having fulfilled the first two conditions, should there be any monies owing to C Limited as determined by the referee, that the Crown pay the outstanding balance. C Limited was the only claimant whose claim was approved subject to conditions.

During the hearing, it was established that C Limited received a cheque for $18,000.00 from W Limited. It was undisputed that the source of the $18,000.00 was a draw received by E Limited from OHC, which money was subsequently transferred to W Limited. It was argued against C Limited that the trust provisions of The Mechanics' Lien Act were applicable and, therefore, the $18,000.00 ought to have been treated as trust monies in C Limited's hands. If the $18,000.00 were trust monies, then C Limited would have to apply the money to its account with the contractor regarding the OHC project.

The referee held that the provisions of The Mechanics' Lien Act did not apply to proceedings under The Public Works Creditors Payment Act, and, therefore, C Limited did not have to deduct $18,000.00 from its claim against OHC.

On July 2, 1973, OHC issued its notice of settled accounts in which C Limited's claim had been rejected. Subsequent meetings were held between C Limited's lawyers and OHC representatives for the purpose of requesting OHC to reconsider its position. On September 4, 1973 the Minister of Housing wrote to C Limited and gave reasons for the OHC decision not to appove C Limited's claim. The Minister stated OHC sought assistance from the Ministry of the Attorney General concerning the correctness of the referee's recommendations. As a result of receiving advice from the Attorney General's Office, OHC held it was unable to make a conditional payment because it lacked jurisdiction to do so under The Public Works Creditors Payment Act. The Attorney General's Office also concluded that the $18,000.00 advance received from W Limited was subject to the trust

provisions of The Mechanics' Lien Act, and therefore, ought to have been applied by C Limited to its account with OHC. Finally, the Minister wrote that the Office of the Attorney General concluded the mortgage which was accepted from the contractor was in lieu of a cash payment.

C Limited brought an application for judicial review of OHC's order. The decision of the Court stated in part as follows:

> "We are of the opinion that there was no liability on the Crown to make a payment to the applicant except as set out in The Public Works Creditors Payment Act. This Act does not set up a tribunal to determine liability, but simply sets out the steps to be taken to authorize a payment by the Crown ...Although a decision rejecting the claim may be inferred, no expressed decision was made nor is there explicit authority for it.
>
> The Board of Directors of OHC elected to set up a public hearing and ...the Board of Directors do not appear to have followed the recommendation made after the hearing. It is agreed that the hearing before Mr. - was properly heard and that there was no denial of natural justice at the hearing."

The Court also held that the OHC Board of Directors was not bound to follow the referee's recommendation and that The Statutory Powers Procedure Act did not apply. The application by C Limited was dismissed, the Court holding that there was no decision made by OHC of which judicial review may be made. C Limited launched an appeal which was dismissed by the Court of Appeal. The court decision did not deal with the merits of C Limited's claim, and accordingly the Ombudsman's jurisdiction was not pre-empted by Section 14 of The Ombudsman Act, 1975.

In this case, the contractor, E Limited was insolvent and accordingly the responsibility under The Public Works Creditors Payment Act to pay the claims fell upon a surety and a guarantor. During the course of the investigation, the Ombudsman came to a number of possible conclusions which may have adversely affected OHC, the contractor, the surety and the guarantor within the meaning of Section 19(3) of The Ombudsman Act, 1975. These persons and organizations were notified in writing and given an opportunity to make written or oral representations with or without legal counsel. All who were notified chose to make oral representations with counsel except Mr. X who attended at the Ombudsman's Offices and made representations without counsel being present.

The Ombudsman reached the following possible conclusions:

1. That the Ontario Housing Corporation acted in an unreasonable manner in denying C Limited's claim on the basis that the referee's conditional recommendation for payment was made without jurisdiction. Although the Ombudsman agreed that there was no authority in The Public Works

Creditors Payment Act which would permit a conditional order for payment, OHC was not bound to accept the referee's recommendation as held by the Supreme Court. Accordingly, if OHC felt that the claim should otherwise be approved it had jurisdiction to pay it.

2. OHC may have been wrong and committed an error of fact in concluding that the mortgage made by S Limited to C Limited in the amount of $175,000.00 was given in lieu of cash payment of the debt owned by W Limited to C Limited. In his report the referee properly accepted evidence that there was sufficient equity available in the mortgaged lands to meet the face value of the mortgage. The mortgage recited that it was given by the mortgagor for the forbearance shown towards W Limited and the advance given to the mortgagor by way of credit. If the mortgagor and W Limited paid the entire amount of the indebtedness incurred by both companies on or before the 31st day of December, 1972, the mortgage shall cease and determine. In the event that W Limited and/or the mortgagor default in paying their present indebtedness to C Limited on or before December 31, 1972 the mortgage shall be conclusively deemed to be in default and the mortgagee will be entitled to take all benefits available to the mortgagee.

   The referee concluded in his report that the mortgage was collateral security. OHC was not bound by the report but from an examination of the mortgage the Omdusman reached the tentative conclusion that the mortgage was not given in lieu of cash but given for a set period of time for the forbearance shown by C Limited to W Limited. Furthermore, there are no repayment provisions in the mortgage which would suggest that it was given in lieu of cash payment.

   During the representations by Mr. X, he stated that the mortgage was not given in lieu of cash payment but only for forbearance.

   The Ombudsman therefore concluded that the mortgage was made to secure the then existing debt W Limited owned to C Limited, and was collateral to that debt. The Ombudsman then reached the tentative conclusion that C Limited was not paid by W Limited for the price of the materials supplied in the construction of the OHC project, and OHC may have been wrong in concluding that the mortgage was given in lieu of cash payment.

3. OHC took the position that the $18,000.00 advance received from W Limited was subject to a trust and therefore ought to have been applied to C Limited's account with the OHC project and not otherwise. The referee stated in his report that the trust provisions in Section 2 of The Mechanics' Lien Act were inapplicable to proceedings taken pursuant to The Public Works Creditors Payment Act. He further stated that as this was the case, the rule in Clayton's case applied to C Limited and therefore the $18,000.00 was appropriate to C Limited's oldest outstanding account with W Limited.

The Ombudsman stated as a tentative conclusion that the rule in Clayton's case was inapplicable with respect to the $18,000.00. It is a condition precedent for the rule in Clayton's case to apply that neither the debtor nor the creditor appropriated the payment. In this case it was clear that C Limited had appropriated the payment to its oldest account when it received that payment. This appropriation was pursuant to C Limited's contractual relationship with the debtor and this fact was to our understanding apparently raised at the referee's hearing.

However, if C Limited's principals had actual knowledge that the payment originated from an OHC draw or if the circumstances were such that C Limited ought to have been put on its inquiry as to the source of the payment, then it appears to be the law that C Limited may not appropriate these trust funds to a purpose outside intent of Section 2 of The Mechanics' Lien Act trust provisions. The Ombudsman tentatively concluded from the investigation to date that as a consequence of the intimate business relationship between C Limited and W Limited, E Limited and S Limited, that C Limited ought to have been put on its inquiry as to the source of the $18,000,00.

The Ombudsman also tentatively concluded that notwithstanding the fact that C Limited received this payment prior to supplying materials to W Limited on account of the OHC project that it would still be inequitable to appropriate this payment to a purpose outside the trust.

The Ombudsman therefore tentatively concluded that C Limited ought to have applied the $18,000.00 payment it received from W Limited to its account with the OHC project.

4. The referee determined that the formalities of the claim were in order with respect to C Limited's application. After evidence of the amount of the claim was produced and examined, the referee determined that the value of the claim was properly $36,196.57. This amount was the subject of argument by both the surety and the guarantor at the referee's hearing. Accordingly, the Ombudsman tentatively concluded that as all the parties had an opportunity to argue the issue of quantum at the hearing, and as OHC never questioned the propriety of this amount in its reasons to C Limited, that OHC may be unreasonable in not accepting this amount as being the correct assessment of the claim.

5. OHC raised as a ground for refusing C Limited's claim that C Limited was not a creditor as defined by The Public Works Creditors Payment Act. Specifically, the ground raised was that as C Limited supplied W Limited which was also a supplier, it was not a creditor under the Act. The referee dealt with this issue in his report as follows:

> "Most of the claim listed W Limited and S Limited as the contractor whereas the contract was between OHC and E Limited. Mr. X, the President of all three companies testified at the hearing that the same principals and shareholders were involved in these companies and it was a matter of internal corporate procedure as to which company was used for various contracts. Any claimant, therefore, dealing with any of the three companies was dealing with the 'contractor' and in my report I will merely refer to the 'contractor'."

It appeared that OHC initially accepted the referee's position on this issue as it approved at least three claims of claimants who supplied W Limited or S Limited as opposed to E Limited.

The Ombudsman tentatively concluded that the definition of 'creditor' in Section 1(c) of The Public Works Creditors Payment Act is wide enough to include C Limited as a proper claimant. Moreover, the Ombudsman tentatively concluded that the referee's position was correct and that it may have been wrong and, in view of the above, unreasonable for OHC not to pay C Limited's claim on this basis.

6. In its representations to the Ombudsman, OHC stated that it may have been unable to reconsider C Limited's claim because the claim had been denied. It was the opinion of the Supreme Court in C Limited's application for judicial review that "although a decision rejecting the claim may be inferred, no expressed decision was made nor is there explicit authority for it". Moreover, OHC apparently reconsidered C Limited's denied claim on at least one or two occasions.

   It therefore appeared open for the Ombudsman to tentatively conclude that OHC was not functus officio in this matter, and it may be wrong and contrary to law for it to refuse to approve the claim on this basis.

   The possible recommendation was as follows:

   That OHC pay the claim in the amount of $18,196.57.

With respect to the first possible conclusion, OHC stated that its Board of Directors lacked jurisdiction to adopt the referee's conditional recommendation, with which the Ombudsman agreed. The counsel for OHC stated that C Limited's claim was denied on the basis that C Limited had received $18,000.00, referred to in the third possible conclusion, and on the basis that the mortgage referred to in the second possible conclusion, was accepted from the contractor in lieu of cash payment. Neither counsel for OHC nor counsel for the surety made specific reference to the possible conclusion that OHC would have jurisdiction to otherwise approve the claim notwithstanding the referee's conditional recommendation. The Ombudsman concluded therefore that OHC accepted the first possible conclusion but was of the view that it is irrelevant as C Limited's claim was also denied for other valid reasons; namely, that C Limited received $18,000.00 in trust monies and took a mortgage in lieu of cash payment.

Counsel for OHC made several submissions in replying to the second possible conclusion. Essentially, these were as follows:

A. That Mr. X gave uncontested evidence at the referee's hearing that there was sufficient equity in the mortgaged lands to satisfy all mortgages;

B. C Limited's representative at the hearing refused to give evidence with respect to the mortgage;

C. OHC exercised its discretion pursuant to Section 2(2) of The Public Works Creditors Payment Act not to pay the claim because the evidence was consistent with the conclusion that C Limited had accepted the mortgage in lieu of cash;

D. The renewal clause in the mortgage supports this conclusion as it indicates the mortgage was given for something more than collateral security; and

E. C Limited, having had the opportunity to adduce evidence surrounding the mortgage at the hearing should not now be entitled to bring in fresh evidence at this late date in a different form than the referee's hearing.

Counsel for the surety submitted that the mortgage was given not only to secure existing indebtedness but possible future indebtedness which did not materialize. As such, the mortgage was clearly more than collateral security and in fact represented a new agreement that was substituted for any former obligation.

The Ombudsman acknowledged that Mr. X's evidence was properly accepted by the referee. However, the Ombudsman was unable to come to the opinion that the conclusion reached by OHC concerning the mortgage was consistent with the evidence available to it from the hearing for the reasons stated in the second possible conclusion. The Ombudsman also considered the submissions made by counsel for the surety about the effect of the provision in the mortgage making it applicable for future indebtedness. The Ombudsman agreed with the submission that fresh evidence should not now be relied upon in the formation of his opinion. The Ombudsman assumed this submission refers to the statement made by Mr. X concerning the mortgage not having been given in lieu of cash. Mr. X's statement is referred to because it was obtained as part of the Ombudsman's investigation and appeared supportive of the Ombudsman's opinion on this issue. However, the Ombudsman's opinion as set out here was based on the evidence which was available to OHC notwithstanding Mr. X's statement, as is stated in the second possible conclusion.

The Ombudsman was of the opinion therefore that this provision did not alter the essential character of the mortgage as being collateral security. Accordingly, the Ombudsman was of the opinion that the decision reached by OHC on this point was wrong within the meaning of Section 22(1) of The Ombudsman Act, 1975.

The third possible conclusion was accepted by OHC. However, the complainant's counsel made substantial submissions concerning the issue. It should be noted that in the course of the investigation, the complainant swore a statutory declaration that neither he nor his company had knowledge about the source of the funds being from an OHC draw. Moreover, the complainant indicated the funds were received in the ordinary course of business. The Ombudsman did not doubt the complainant's good faith on this issue; however, the principle of constructive notice was in the Ombudsman's opinion applicable. Constructive notice is notice where knowledge of a fact is presumed from the circumstances of a case so that one is held to have constructive notice of facts to a knowledge of which he would have been led by inquiry such as men of business under similar circumstances would reasonably have made.

C Limited's general manager was cross-examined on his affidavit filed in support of the application for judicial review. Several of his answers may reasonably suggest that circumstances were such that C Limited ought to have been put on its inquiry as to the source of the funds. These questions and answers were made available to the complainant. In the Ombudsman's opinion OHC could look at this evidence and conclude that the relationship between W Limited and C Limited was such that C Limited ought to have been put on its inquiry concerning the cheque it received in the amount of $18,000.00. C Limited then ought to have applied this amount to its account with the OHC project.

The representations OHC made concerning the Ombudsman's fourth possible conclusion related to the fact that in rejecting C Limited's claim, OHC did not rule on whether the sum of $36,196.57 represented a correct assessment of the value of the claim for materials supplied. The Public Works Creditors Payment Act required that OHC rule on this issue. As OHC has not done so, the Ombudsman was unable to make any recommendation pursuant to The Ombudsman Act on this issue.

The Ombudsman noted that the referee recommended payment of ten claims out of which OHC accepted nine. Of these nine claims OHC paid eight in the amount the referee recommended and reduced one. It would seem reasonable, then, that the referee's assessments were quite accurate. Although OHC is not bound by the referee's recommendation, it seems more likely than not that his assessment of C Limited's claim would be accurate as well.

The Ombudsman suggested that in these circumstances that if OHC accepted the other conclusions and recommendations that flow from them, that it rule on the value of C Limited's claim. The issues discussed in the fifth possible conclusion were not raised by OHC in the reasons given to C Limited by the then Minister. However, it was an important point which was also raised by the surety and the guarantor. It was the Ombudsman's understanding that the surety would oppose paying the claims already approved by OHC of claimants who were in the same contractual relationship as C Limited.

OHC previously accepted the referee's interpretation of the definition of creditor and contractor as they were applied in his hearing held pursuant to The Public Works Creditors Payment Act. The Ombudsman was therefore of the opinion that it would be wrong and unreasonable to deny C Limited's claim on this basis. If the issue of the proper interpretation of claimant and contractor was to be determined in a court of law, then it would be unreasonable not to have this resolved as it applied to C Limited's claim as well.

In its reply to the sixth possible conclusion, OHC reiterated its argument that a decision had been made by the Board of Directors of OHC to deny C Limited's claim. This being the case, OHC would be functus officio concerning this decision, and would have no authority to reconsider C Limited's claim.

Counsel for OHC submitted that if the Supreme Court had the Minister's letter before it, the decision it gave would have been different on

the issue raised in this possible conclusion. The Ombudsman re-examined the Minister's letter and agreed that OHC made a decision not to pay the claim. However, the Ombudsman was unable to accept the balance of the submission made by OHC's counsel.

The Supreme Court stated the following:

> "In the instant case, although a decision rejecting the claim may be inferred, no expressed decision was made nor is there explicit authority for it".

The Minister's letter supported this inference and may even have gone so far as to be an express decision of the Board of Directors of OHC, although to the Ombudsman's knowledge no formal resolution was ever passed by the Board denying C Limited's claim. In the Ombudsman's opinion, however, the Supreme Court clearly states that there is no explicit authority given to OHC by The Public Works Creditors Payment Act to formally deny a claim but only to approve a claim. Moreover, only a decision to pay a claim appears to be "not open to dispute a question" and then only "by the contractor or the surety". It would seem that a creditor is not precluded from disputing the rejection of a claim or for that matter, a partial payment of a claim.

It may be argued that notwithstanding the above, there is implicit authority given by The Public Works Creditors Payment Act to make a decision rejecting a claim to bring finality to such matters.

The Ombudsman took the position that the principle of functus officio is applicable only to decisions made by tribunals exercising a judicial or quasi-judicial function. In the Ombudsman's opinion, in making this decision OHC was not exercising such a function. It appeared to the Ombudsman that the decision made by OHC was an administrative one, which interpretation the Ombudsman believed was supported by the ruling given by the Supreme Court:

> "We are of the opinion that there was no liability on the Crown to make payment to the applicant except as set out in The Public Works Creditors Payment Act. This Act does not set up a tribunal to determine any liability, but simply sets out the steps to be taken to authorize a payment by the Crown."

The OHC was therefore, legally in a position to have reconsidered C Limited's claim. It was the Ombudsman's opinion pursuant to Section 22(1) of The Ombudsman Act, 1975 that it would appear to be wrong and contrary to law for OHC to refuse to approve C Limited's claim on this basis.

The Ombudsman reached the following opinions pursuant to Section 22(1) of The Ombudsman Act, 1975:

1. That OHC in denying C Limited's claim on the basis that the referee's conditional recommendation for payment was made without jurisdiction, was unreasonable, and was wrong.

2. That the mortgage given to C Limited by S Limited was collateral to the debt owed by W Limited to C Limited and not in lieu of cash; and OHC was wrong in concluding as it did.

3. That the Ombudsman was unable to conclude that the decision made by OHC, that the $18,000.00 received by C Limited from W Limited ought to be applied to C Limited's account with the OHC project, was wrong.

4. That as OHC had not ruled on the referee's assessment of C Limited's claim, the Ombudsman was unable to say that OHC had been unreasonable in not accepting the amount assessed by the referee as being the value of the materials supplied to the OHC project.

5. That it would be unreasonable and wrong for OHC to deny C Limited's claim on the basis that C Limited was not a contractor as defined by The Public Works Creditors Payment Act.

6. That it would be wrong and contrary to law for OHC to refuse to approve C Limited's claim on the basis that a decision had been made denying the claim so that OHC is functus officio.

The counsel for the surety and the guarantor submitted during their representations pursuant to section 19(3) of The Ombudsman Act, 1975 that C Limited's conduct throughout the events indicated bad faith. The Ombudsman carefully considered the evidence given at the referee's hearing, and all other circumstances which surrounded the OHC project. The Ombudsman concluded that based on his investigation and the representations made to him that C Limited had not acted in bad faith.

Counsel for OHC also submitted that the possible recommendations could not be implemented as The Public Works Creditors Payment Act did not authorize claims settled by the Crown to be paid from public funds. Section 22(2) of the Act reads in part as follows:

> The Crown may...pay the claimant the amount settled upon and deduct the amount so paid from any monies due...to the contractor to permit of such deduction, the surety...shall pay to the Crown upon demand an amount suffficient to make up the deficiency.

It appears from the above wording that the Crown may pay the claim out of public funds and then reimburse itself from the contractor and the surety. However, the Ombudsman did not wish to make a recommendation, the consequences of which would result in C Limited being treated more favourably than the other claimants were. The Ombudsman felt that it would be reasonable for OHC to make a demand for payment on the surety on behalf of C Limited as it did for the other creditors.

The Ombudsman made the following recommendations in his report:

1. That OHC reconsider C Limited's claim as assessed by the referee and rule on the correctness of the assessment;

2. That OHC reconsider the mortgage in question as being a collateral security and not taken by C Limited in lieu of cash and not altering the then existing obligations between C Limited and W Limited;

3. That OHC not deny C Limited's claim on the basis that it was not a claimant or a contractor as defined by The Public Works Creditors Payment Act and accept the referee's definition thereof; and

4. That OHC recommend that the claim as assessed by OHC be paid by the surety.

The Ombudsman's report made under Section 22(3) of The Ombudsman Act, 1975 was forwarded to the Minister of Housing and to the Chairman of the Ontario Housing Corporation. In due course, the report was referred to the Corporation's Board of Directors.

The Chairman wished to know for the assistance of the Board whether C Limited realized any monies on their $175,000.00 mortgage, and if not, whether or not it was still open for them to do so. A copy of the judgment in the Supreme Court was obtained by the Ombudsman which indicated the results of a court action to determine the priorities of the mortgage in question. The judgment indicated that to the extent that the mortgage secured the debt for materials to C Limited supplied to W Limited, the mortgage did not have priority over the numerous mechanics' lien claimants joining the action. The mortgage did have priority over lien holders with respect to those debts which C Limited was not entitled to register a lien. The effect of this decision was that C Limited was effectively precluded from realizing any monies on the mortgage.

The OHC Board of Directors, after considering the information supplied to them, concluded that it had made a final and binding decision to reject C Limited's claim in its entirety in July of 1973. OHC was not prepared to re-open or reconsider the claim. The Board indicated that their decision in 1973 was arrived at after a thorough investigation had taken place of the relevant facts and the weighing of the submissions advanced by C Limited and the other concerned parties at the time and subsequent events concerning the mortgage would not alter that decision.

Futhermore, the Board indicated it was not prepared in any case to adopt the Ombudsman's argument that under The Public Works Creditors Payment Act, only a decision to pay a claim is not open to dispute or question by the contractor or the surety but is final and binding upon them, and that this does not extend to decisions to reject the claim. Such an interpretation would effectively eliminate the wide discretion intended to

be afforded to the Crown and to Crown agents and would make it virtually impossible to reach a final and binding decision unless full payment of a claim was afforded to the claimant in all instances.

The Ombudsman's report and recommendations as well as copies of OHC letters of reply to the Ombudsman were forwarded to the Premier who acknowledged their receipt.

MINISTRY OF

LABOUR

THE WORKMENS' COMPENSATION BOARD

DETAILED SUMMARY NO. 19

In July, 1969, this complainant slipped at work and saw the company physician for a low back ache. He went home that day but returned to light work the next day. The Workmen's Compensation Board was notified of the accident. Since the accident in 1969 the complainant suffered intermittent low back pain. A low back brace was prescribed by the company physician. An x-ray was taken in May, 1970 showing minor degenerative changes present in the lumbar spine and indicated no change in the appearance of the spine since the last examination in July of 1969.

In April, 1976, the complainant was working on an assembly line. He went to the employer's medical office and received medication and heat treatment for a diffuse low lumbar ache. He was put on restricted work with no bending, twisting or lifting and told to return to the medical office on April 15, 1976 for a re-examination. When he returned he was still complaining of back pain and was advised that if he could not cope he would have to take some time off work. The information in the Board's investigative notes indicates that by April 22nd, he was performing his regular work but complaining of back pain. He received heat treatment and "282" tablets from the employer's medical office. Later that day, his foreman took him off his regular work. The complainant advised the medical office that he would be seeing his family physician regarding his back condition. He stopped working on April 23rd and sought medical attention from his family doctor. The family physician submitted a report to the Board in May, 1976. He informed the Board that the complainant had degenerative disc disease with muscle spasm and that he would be disabled for three weeks. On May 3, 1976, he returned to modified employment, still complaining of back pain. He worked until May 18, 1976 at which time he stopped due to his back condition. He did not return to work until March 7, 1977.

The Workmen's Compensation Board denied the worker benefits. After completing the appeal procedure the worker registered a complaint with the Ombudsman on January 16, 1978. The Workmen's Compensation Board was notified pursuant to Section 19(1) of The Ombudsman Act, 1975, of the Ombudsman's intention to investigate. The investigation involved a thorough review of the Board's file and several interviews with the complainant.

During the course of the investigation, the Ombudsman came to a tentative conclusion which might adversely affect the Board and the employer. Accordingly, by letter written pursuant to Section 19(3) of The Ombudsman Act, 1975, the possible conclusion and possible recommendation were reported to Mr. Starr and the employer, as follows:

> "Possible Conclusion
>
> It would appear that it might be open to me to conclude pursuant to Section 22(1) of The Ombudsman Act, 1975, that it was unreasonable for the Workmen's Compensation Board to conclude that (the

> complainant) did not suffer a compensable accident arising out of and in the course of his employment on April 9, 1976 which aggravated a pre-existing, non-compensable low back condition ... It would appear possible that it was unreasonable for the Workmen's Compensation Board not to extend the benefit of reasonable doubt in this case and grant (the complainant) entitlement for a low back condition on an aggravation basis...
>
> Possible Recommendation
>
> It would appear that it might be open to me to recommend pursuant to Section 22(3)(c) of The Ombudsman Act, 1975, that the decision of the Workmen's Compensation Board in this case should be cancelled and that entitlement should be granted to (the complainant) for an accident arising out of and in the course of his employment on April 9, 1976... ."

The Board responded in October, 1978 by stating that the Appeal Board and the Board were unable to accept the possible recommendation. The Board's letter read, in part, as follows:

> "The Appeal Board Panel has reviewed the matter in its entirety and finds the information establishes that prior to the work accident of July 25, 1969 (from the x-ray reports taken in 1969 and May of 1970) (the complainant) had pre-existing radiological changes, and that the accident of July 25, 1969 was a no lost time accident.
>
> The investigation reports demonstrate that (he) had symptoms relative to his low back during the intervening years which he attributed to arthritis. It is reported by the foreman and a fellow worker that (he) wore a corset intermittently during this period.
>
> With respect to the purported accident of April 9th, 1976, it appears that no specific incident was reported to fellow employees, the foreman or the Medical Department. (He) continued to work until April 23, 1976. Medical treatment was not sought from his family doctor, until April 23rd at which time the patient's history of injury was 'During a twisting motion, the patient experienced pain in the lower back with radiation down the leg'. This is more or less the history reported by (the complainant) on May 29, 1976 on his Form 6.
>
> It was and is the opinion of the Appeal Board Panel that the evidence does not establish that (the complainant) had any new incident to constitute a compensable accident arising out of and in the course of

> his employment on April 9, 1976, and that the weight of the evidence leads to the conclusion that (his) disablement from work from April 23rd, 1976 was due to his pre-existing degenerative disc disease and not occasioned by disablement arising out of and in the course of his employment."

The employer requested under the provisions of Section 19(3) of The Ombudsman Act, 1975, that he be allowed to verbally respond. Consequently, in November, 1978, representatives from the Company voiced concern about the possible recommendation outlined in the 19(3) letter. As a result of that meeting, a clarifying letter was sent to the Company and to the Board.

In January, 1979, a member of the Ombudsman's investigative staff telephoned the Board and was advised that the Board would not be preparing a written response to the December, 1978 letter. The employer responded by letter in February, 1979. It was the employer's position that the Board Decision was reasonable and that they could find no justification for the Board arriving at any other conclusion.

The Ombudsman considered the arguments made by the employer and the Board.

The investigation of this complaint revealed that there were various recorded statements concerning the cause of his back pain on April 9, 1976.

The employer stated that the complainant's back disability was due to an arthritic back condition. A review of the available information indicated that the worker was treated for muscular back problems and arthritis in January, 1970 by his family doctor. In May, 1970, x-rays of his back were taken which revealed that he had some arthritis in his back. The company physician was of the opinion that the complainant had low back arthritic pain and placed him on light work in May, 1976.

The Board's investigative notes indicated that the complainant's supervisor reported that the worker was not claiming compensation benefits, because the complainant told him that his back condition was due to arthritis, a condition he had had for some time. Consequently, the report submitted to the Board by the employer was based upon the supervisor's comments.

However, the complainant advised our Office that he did not have an arthritic back. According to the Board's own investigative notes, he denied that he had informed his supervisor that his back problem was due to arthritis. Furthermore, a senior Board physician reviewed the complainant's file and the medical reports. In a memorandum in January, 1971, that physician wrote "... The frequent use of the term arthritis for his problem seems to me to have no medical justification. There is really no suggestion at all anywhere that he has a true inflammatory form of arthritis. It is quite clear that the diagnosis is one of degenerative disc disease...".

There is also mention by the complainant in a report received by the Board on June 3, 1976 that he felt "...(I) must have twisted my body the

wrong way while working on April 9, 1976...". This is basically the same history as outlined by the family physician in his report to the Board in May, 1976. The complainant told the Board's representative in July, 1976 that he injured his back on April 9th while lifting. This statement was reiterated by him to the Appeal Board Panel. The medical office records obtained by a Board representative in July, 1976 recorded that he attributed his back pain on April 9th to bending over constantly. The records indicate that the Board representative while interviewing the family physician, revealed that the family physician had telephoned the company physician, to determine whether or not a report should have been sent to the Board. The family physician's notes read "The injured employee apparently relate his problem to a twisting motion that his job requires him to perform quite often".

Based upon the information outlined above, the Ombudsman was of the opinion that a work-related incident on April 9, 1976, aggravated the complainant's pre-existing back problem. He noted that the various statements as to the reason for the onset of his back disability indicated that he may have been bending, twisting, lifting or a combination of all these movements. When one considered the nature of these movements and the statements made by the complainant there was an association between his back disability and his work activity. He did report to the medical office, within approximately one-and-a-half hours after experiencing the onset of back pain. At that time, he attributed his back pain to bending over constantly.

The Report of the Ombudsman was sent to the Board in June, 1979. The Ombudsman concluded that the Appeal Board Decision of August 30, 1977 was unreasonable and recommended pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Appeal Board revoke its decision dated August 30, 1977 and extend to the complainant the benefit of reasonable doubt to grant entitlement for an incident arising out of and in the course of his employment on April 9, 1976 which aggravated a pre-existing back condition and award the appropriate compensation benefits. A copy of the Report was forwarded to the Minister of Labour.

In August, 1979, the Ombudsman received a letter from the Board which stated that the Board would not revoke the Appeal Board decision of August, 1977. The Board's letter read in part:

> "... The Board has considered your conclusions and recommendations, but is not satisfied that the fact that (the complainant) sought medical attention on April 9th, 1976 and associated his back discomfort with bending on the job, would necessarily substantiate that '... a work-related incident did occur which resulted in (the complainant) suffering a back disability'.
>
> Having regard for the various histories given by (the complainant) as to the reason for his back pain, the Board is unable to conclude that any incident or unusual occurrence took place on April 19th, 1976. As such, his circumstances would not fall within the definition of 'accident' as described in sub clauses (i)

and (ii) of Section 1 (1)(a) of The Workmen's Compensation Act.

The Board has, therefore, considered (the complainant's) entitlement under sub clause (iii) of the Act, which defines an accident as '... disablement arising out of and in the course of employment'. In this particular case, the Appeal Board accepts that (the complainant's) onset of back pain occurred in the course of his employment. In view of the undisputed fact that (he) had a pre-existing non-compensable back disability, and noting the fact that he was not performing any unusual work or work to which he was unaccustomed on April 9th, 1976, the Board concludes that a causal relationship has not been established between the work performed and the subsequent back complaints. For this reason, the Board concludes that the presumptions provided in Section 3 subsection 2 of The Workmen's Compensation Act cannot apply as in fact, it has been shown that (the complainant's) disability arose out of his pre-existing non-compensable disability rather than his employment. In this regard, the Board notes that the diagnosis is that of degenerative disc disease with muscle spasm.

In view of the foregoing, the Board concludes that the Appeal Board's decision of August 30th, 1977 was correct and that consequently, there is no basis upon which that decision should be revoked as recommended in your letter of June 7th, 1979."

In October, 1979, the Ombudsman sent a letter to the Board and requested a response to the following statements:

"It is my opinion that the evidence supports a causal relationship between (the complainant's) back disability and the nature of the work he was performing on April 9, 1976. It is my understanding, according to Directive No. 2 dated August 15, 1953, that if, 'a movement arising out of the work' can reasonably be shown to have caused the disablement, entitlement should be granted. It is my opinion that the medical evidence available in 1976 does establish that the movements arising out of (the complainant's) work caused his disablement. I am of the opinion 'unusual work or work to which he was unaccustomed' is not a condition for entitlement either in the wording of the section itself or your directive interpreting this section."

The Board replied in November, 1979. The Board's response read in part:

> "It is the opinion of the Board that (the complainant's) disability requiring lighter work from April 9th to 23rd, 1976 and lost time from April 23rd, 1976 was not occasioned by such circumstances as strenuous work, awkward position or unaccustomed strain. Furthermore, the Board is of the view that as (he) had performed this same work for the preceding two-year period, it is not reasonable to conclude that the movements arising out of the work performed for 18 minutes on April 9th, 1976 could be considered to have played any significant part in the disability as subsequently diagnosed."

A discussion of this case was held with the Minister of Labour, the Ombudsman and representatives of the Board in February, 1980. In March, 1980 we received notification that the Board did not intend to implement our recommenation. A copy of the Ombudsman's Report of June, 1979 was sent to the Premier in March, 1980 pursuant to the provisions of Section 24 and 25 of The Ombudsman Act, 1975. The Premier in his response did not indicate that any steps would be taken to implement the Ombudsman's recommendation.

DETAILED SUMMARY NO. 20

This complaint was brought to the Ombudsman's attention by letter in February, 1978. A letter pursuant to Section 19(1) of The Ombudsman Act, 1975 was forwarded to the Chairman of the Workmen's Compensation Board advising the Chairman of the Ombudsman's intention to investigate this complaint and requested all documents pertaining to the worker's injury. In this letter the complaint was summarized as follows:

> "That he is entitled to benefits from the Workmen's Compensation Board for personal injury arising out of and in the course of his employment due to exposure to methyl acrylate and benzene."

The investigation revealed that the injured worker was employed as a laboratory technician. In July, 1973 the complainant experienced a headache which he contended was a result of exposure to gas. He further contended that he had suffered exposure and headaches in 1971 and 1972.

In August, 1973, a neurologist noted, "This patient himself has been a rather tense individual who has a checkered psychiatric history". It was noted that there had never been any symptoms of acute poisoning in the complainant's unit nor had anyone suffered any problems. Also, there was no evidence of organic mental change. The neurologist concluded:

> "I feel quite certain in stating that there is no evidence of any exposure to toxic chemicals. I explained to the patient that hydrocarbons produce symptoms at the time they are taken in excess

> quantity, that build-up in the system to my knowledge does not occur. This man is not exposed to lead or other such toxic chemicals. I would feel certain that his headaches are not due to any industrial exposure but merely the result of tension in an individual who had suffered a good deal in this respect."

The E.E.G. showed no abnormality. Further, the neurologist stated, "There is no indication for further neurological investigation".

Prior to the 1973 incident, the complainant had experienced health problems. In September, 1971 he was admitted to hospital with chest pain. Again, at the end of October, 1971 he was admitted to hospital with a diagnosis of severe depression. In May, 1972 the injured worker began to experience more severe headaches. Though he had suffered headaches for years, he claimed they became worse with exposure to acrylates in 1970. When he was admitted to hospital in June, 1972 his family physician noted, "Since approximately five years the patient has been in a rather bad nervous condition suffering from anxiety with depression due to his family conditions". After his discharge, he remained on tranquillizers and was able to work; however, it was suggested by his superiors at work that he seek medical aid.

That month, a psychiatrist noted, "From the psychiatric standpoint it appears to me that this man has some degree of depression present at all times". Subsequently, the complainant received seven electric shock treatments.

Following the 1973 incident in the laboratory which prompted his claim, the injured worker experienced more health problems. In October, 1973 he was admitted to hospital with a diagnosis of, "Chest pain and shortness of breath, most probably due to nervousness and depression". In December, 1973 the Claims Review Branch denied entitlement for this claim.

Later in December, a meeting was held at the request of the complainant between himself, his union representative and several company representatives, including the medical officer. The complainant contended that he had suffered permanent physical damage because of overexposure to high concentrations of acrylate fumes. It was generally agreed that there had been exposure to acrylate fumes. At a subsequent meeting in January, 1974, after a review of the medical records of technicians who had previously worked with acrylate, it was shown that none had suffered any ill effects from their exposure to acrylate fumes. Further, it was agreed that there were no further medical tests which could be carried out to confirm or deny this statement.

In April, 1974 a doctor from the Occupational Health Protection Branch visited the work place. This doctor investigated the two episodes which the complainant related to his illness. This doctor concluded:

> "Styrene would not produce chronic effects such as he reports. Acrylates toxicity is related to the cyamide

radicle present. Long-term toxicity of acrylates is generally unknown."

In a telephone conversation with an Ombudsman Investigator in October, 1979 this doctor confirmed his conclusions. When asked if there had been any new research or evidence that might contradict his findings of 1974, the doctor replied, "Not to my knowledge". He added that in January, 1975, the acting director of the Occupational Health Protection Branch had confirmed that blood tests submitted on the injured worker did not indicate a significant abnormality.

In May, 1977 the complainant was seen by another psychiatrist who agreed, "that a mental illness is present". The doctor hoped to be able to help the injured worker to regain his mental health and also to determine the etiology of his mental condition. In September the doctor stated that he did not know the cause of this man's illness; however, he had seen other people with the same type of illness who had not been exposed to such chemicals. The psychiatrist concluded, "I personally would consider paranoid state as being the most suitable descriptive diagnosis".

In January, 1978 the Appeal Board concluded, "That there is no medical evidence to support a relationship between the disability claimed and any exposure to toxic fumes. The appeal is denied."

Based on the available medical evidence, the Ombudsman concluded that the Appeal Board's decision to deny this worker benefits was not unreasonable. Medical reports did not relate this man's mental disorders to exposure to methyl acrylate and benzene. The injured worker and the Chairman were notified of the results of the Ombudsman's investigation in December, 1979.

DETAILED SUMMARY NO. 21

In July, 1978, the complainant visited our Office and registered a complaint against the Workmen's Compensation Board . He contended that the permanent disability pension awarded by the Board for his left hand amputation did not adequately reflect the degree of his disability. He also contended that he was entitled to temporary special supplementary benefits.

A letter pursuant to Section 19(1) of The Ombudsman Act, 1975 was forwarded to the Chairman of the Board in September, 1978. This letter informed the Chairman of the Ombudsman's intention to investigate this complaint and requested all documents pertaining to the worker's injury.

The investigation revealed that, in June, 1973, the complainant was operating a press machine and, as he reached over to clear scrap from the back of the machine, his foot tripped the press and his left hand became caught in the machine. His left hand was badly crushed and required amputation at the wrist.

The complainant was admitted to the Board's hospital in July, 1973. Medical reports at that time indicated he would be unable to return to his

former employment and that he should be given some form of upgrading program. He was fitted with a permanent below-elbow prosthesis. By October, 1973, it was reported that he was using his prosthesis well and he was advised that he was capable of returning to work. He returned to work with his pre-accident employer in January, 1974 but he was able to work three hours only because of pain in the amputation stump.

In November, 1974, the complainant was examined by one of the Board's Pensions Medical Advisors. At that time, the Pensions Medical Advisor noted the complainant had a full range of movement of the elbow joint and good strength in his right arm. His residual disability was assessed at 55%.

In March, 1975, the Board's Rehabilitation Branch arranged for the complainant to commence an English upgrading course at George Brown College. In October, 1975, the college reported that the complainant had trouble in accepting instruction and the program was terminated. The complainant was re-admitted to the college in March, 1976 on another English upgrading course which he completed in August, 1976.

The complainant received a temporary special supplement between October, 1976 and April, 1977 to assist him financially while he was seeking suitable employment. In April, 1977, the Board's Rehabilitation Branch referred him to the Ability Centre for an Assessment Course to determine if he was physically capable of returning to the work force. However, in May, 1977, two weeks after he commenced the assessment, the complainant left the course. His reason was that he was experiencing pain in his left arm and stump. His family physician advised him to rest for one week and then to return to the assessment program. The complainant did not return and the program was terminated. The Board's records indicated that because of the complainant's failure to co-operate with the Rehabilitation Branch in the assessment program, the temporary special supplement was terminated. The medical information available indicated that the complainant was medically capable of returning to the assessment program in May, 1977.

The complainant was seen on several occasions by specialists at the Amputee Conference at the Board's Hospital and Rehabilitation Centre. Medical reports indicated he had a good functioning right arm and he was capable of performing light or moderately heavy work.

Based on the medical information, it was the Ombudsman's opinion that there was insufficient evidence to support the complainant's contentions and that his permanent disability rating was in keeping with the schedule provided for under Section 42(3) of The Workmen's Compensation Act. The Ombudsman therefore concluded that the Appeal Board's decision was not "unreasonable". The Chairman and the complainant were notified of the results of the investigation.

DETAILED SUMMARY NO. 22

On December 15, 1950 the complainant sustained contusions of the back and left hip during the course of his employment as a construction

labourer when a steel beam slipped and fell onto him. The complainant was hospitalized for about one week following the accident.

The Workmen's Compensation Board accepted the claim for disability benefits, allowing entitlement for the hip disability and for the back injury on the basis of an aggravation of a pre-existing condition. The complainant was granted benefits from December 15, 1950 to July 11, 1952.

When the complainant consulted his family doctor in March, 1951, he stated that, in addition to his back pain, he was suffering from a pain in the region of the left kidney. The doctor did not prescribe any treatment for either problem, rather he recommended that the complainant attempt to return to some form of modified employment.

During the course of an examination in August, 1951, the complainant's family doctor took a urinalysis which showed the presence of blood cells in the urine. In September, 1951 the doctor reported that the complainant was continuing to have genito-urinary difficulties. In November, 1951 the family doctor referred the complainant to a general surgeon who, on November 13, 1951, removed the left kidney.

A pathologist subsequently examined sections of the kidney and diagnosed inflammation of the kidney associated with gross hematuria. Further examination by other pathologists revealed the possibility that the surgeon who had removed the kidney had done so based on his assumption that trauma had caused the development of a hematuria. The pathologist was of the opinion that this assumption was false and that there was no relationship between the trauma and the hematuria because he found the kidney to be normal except for a small traumatic laceration which he felt had been produced at the time of the operation.

Further examinations were conducted in 1953 at a Toronto hospital. The pathologist who examined the kidney on that occasion concluded that a normal kidney had been removed and that the bleeding had probably come from the bladder. It was his opinion that the complainant's kidney had been in no way affected by the injury.

The Board denied entitlement to the complainant for removal of the left kidney because, in its opinion, no relationship between the operation and the accident could be established.

In July, 1952 the complainant was granted an award of 15% for his hip disability and 5% for his back disability. The complainant returned to regular work from 1954 to 1962 and thereafter had intermittent employment until 1967.

In early 1968 the complainant's family doctor reported to the Board that, in his opinion, the complainant was totally disabled by his back. The Board referred the complainant to an orthopaedic surgeon who found that the hip injury had almost completely healed. However, he was of the opinion that the overall disability was 50%, although a portion of that disability was attributable to problems unrelated to the accident. The Board re-assessed the complainant and recommended an increase in the award for his back, increasing his total award to 30%. This award became effective in

October, 1967, the date on which the Board was advised that the complainant's back was causing him further problems.

The issue of the complainant's kidney problems did not arise again until 1968 when the Board was informed of his sudden death. The Board was advised that the complainant was found to have been affected by a lined loop bowel which resulted in an infection. The complainant passed away suddenly, shortly after the infection appeared to have been brought under control. The complainant's family doctor raised the question of whether the complainant would have survived the infection had he had both kidneys and whether this issue could be related to the original back injury.

Entitlement for the removal of the kidney was again denied by the Board.

In January, 1969 the complainant's widow appealed to the Appeal Board of the Workmen's Compensation Board , claiming that her husband's 30% pension did not adequately compensate him for his residual disability and that the removal of his left kidney was due to the injury he had received in his accident. The Board denied the appeal because, in its opinion, the complainant's degree of permanent disability from his injuries sustained in his accident was not higher than 30%. The Board found that medical evidence was not supportive of the contention that the surgical removal of the complainant's left kidney in November, 1951 had a relationship to the original accident.

In July, 1977 the complainant's daughter wrote to the Ombudsman on her mother's behalf, contending that her mother had entitlement to benefits pursuant to Section 36 of The Workmen's Compensation Act. This contention resulted from her belief that the complainant's death had been caused by the compensable condition. She further contended that the pension paid to the complainant while he was alive was insufficient and that he was totally disabled at the time of his death.

Pursuant to Section 19(1) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was notified by letter dated August 24, 1977 of the Ombudsman's intention to investigate this complaint. Upon receipt of the photocopy of the Board's file in relation to the complaint, the history of the complainant's claim with the Workmen's Compensation Board was thoroughly reviewed. Further information was obtained from the complainant's widow, from his daughter and from a hospital where the complainant had been treated.

During the course of the Ombudsman's investigation into this complaint, a copy of the complainant's post-mortem report prepared at a hospital on the day of his death was obtained. It was apparent that the Board had not had an opportunity to examine the post-mortem report. Accordingly, in November, 1978, a copy of this report was made available to the Board with the request that the Ombudsman's Office be informed whether the new evidence submitted would cause it to alter its decision in this case. The report was reviewed by the Claims Review Branch and it was concluded that subsequent benefits would not be paid to the complainant's widow.

The investigation into this complaint included a thorough review of the Board's file in relation to the complainant's case. The Ombudsman concluded that the 30% Permanent Disability Award granted by the Board was in keeping with the available medical evidence as to the degree of disability attributable to the compensable accident and the rating schedule authorized by Section 42(3) of The Workmen's Compensation Act.

Insofar as the matter of the relationship between the surgical removal of the complainant's left kidney and the compensable accident is concerned, the investigation did not establish that the nephrectomy was occasioned by the accident. Pathological examinations revealed that no damage was done to the left kidney as a result of the accident and that its removal was not made necessary by the accident.

Accordingly, a report pursuant to Section 23(2) of The Ombudsman Act, 1975 was forwarded to the complainant's widow and to the Board in October, 1979, setting out the reasons why the Ombudsman was unable to support this complaint.

DETAILED SUMMARY NO. 23

In June, 1963, during the course of his employment as a drying machine operator, the complainant felt a sharp pain in his back while pulling a cart filled with wet towels. The initial diagnosis, prepared by the complainant's family doctor, was acute low back strain.

The complainant was admitted to the Board's Hospital and Rehabilitation Centre in September, 1963 for physiotherapy. The attending doctor examined him and diagnosed disc degeneration and strain. He recommended conservative treatment and the use of a lumbosacral corset. The complainant found that the corset helped to relieve some of his discomfort.

The orthopaedic surgeon reported in April, 1964 that the complainant had an underlying degenerative disc disease. This doctor recommended that the complainant accept only light work. During this period the complainant returned to work at the accident employer, but suffered numerous recurrences of back pain which necessitated additional layoffs.

No further medical reports were available until November, 1970 when his family doctor advised the Board that the complainant had to wear his back corset constantly, particularly when at work. Because the complainant's brace was worn out through constant use, it was replaced by the Board on numerous occasions.

The complainant was awarded an 18% permanent partial disability award in 1969. In 1971 his rating was increased to 19.5%.

In November, 1976 the complainant advised the Appeal Board that the level of his permanent disability award was inadequate and that he should have entitlement to an annual clothing allowance because his clothing was damaged by his use of his lumbosacral support. The clothing allowance had initially been refused by the Board because such assistance is provided only

to those persons for whom a rigid back brace has been supplied. The Board refused the complainant's request because he was wearing a canvas-type of lumbosacral support.

At the hearing it was acknowledged that the complainant's disability required him to wear a Camp lumbosacral support. The complainant's representative at the hearing noted that upon reviewing all the definitions of a back brace, no distinction was made between a Harris brace or a Camp support. He advised that the complainant's Camp lumbosacral support was causing excess wear on his outer and underclothing. The appeal was denied because it was the opinion of the Board that lumbosacral supports did not fall within the criteria for acceptance of a clothing allowance as provided for under Section 51(3)(b) of The Workmen's Compensation Act. The Appeal Board also concluded that the worker's permanent disability award should be confirmed at 19.5%.

In August, 1977 the complainant's Member of Provincial Parliament wrote to us on his constituent's behalf, contending that he should have entitlement to an annual clothing allowance and a higher permanent disability award.

Pursuant to Section 19(1) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was notified by letter dated September 15, 1977 of the Ombudsman's intention to investigate these complaints.

Upon receipt of the photocopy of the Board's file in relation to the complaint, the history of the complainant's claim with the Workmen's Compensation Board was thoroughly reviewed. Further information was obtained from the complainant.

During the course of the investigation, The Ombudsman formed the view that the Board's decision to award a 19.5% Permanent Disability Award to the complainant was not unreasonable based on the available medical evidence. The Ombudsman also formed the tentative view that in refusing an annual clothing allowance to the complainant, the Board had acted unreasonably and possibly contrary to law.

Accordingly, a letter pursuant to Section 19(3) of The Ombudsman Act, 1975 was sent to the Chairman of the Workmen's Compensation Board on June 16, 1978, setting forth the following possible conclusion and possible recommendation:

"Possible Conclusion:

1. It is possible for me to conclude that the Appeal Board's decision not to allow (the complainant's) claim for an annual clothing allowance was unreasonable.

   An examination of samples of (the complainant's) clothing demonstrates that the two vertical metal bars in the lumbosacral support which he wears have caused noticeable

> wear and tear on his clothing. I am of the tentative opinion that (the complainant) is therefore entitled to a clothing allowance and that the Board's definition of back brace, which excludes the type of brace worn by (the complainant), is at least unreasonable and possibly contrary to law.
>
> Possible Recommendation:
>
> That the Appeal Board vary its decision of November 12, 1976 and allow (the complainant) an annual clothing allowance retroactive to the date such allowances became available under The Workmen's Compensation Act."

The Chairman of the Workmen's Compensation Board made representations in a letter dated June 30, 1978. In that letter, the Chairman stated:

> "Under Section 51(3)(b) the Board may pay an allowance for the replacement or repair of clothing worn or damaged under certain circumstances. One of these circumstances is the wearing of a back brace for a permanent back disability.
>
> The Appeal Board panel and the Board do not consider that the support provided to (the complainant) is a back brace as contemplated by that section.
>
> The Appeal Board panel and the Board sees no reason to change the decision of November 12, 1966 (sic)."

After giving full consideration to the representations and comments of the Board respecting the tentative recommendation, the Ombudsman concluded pursuant to Section 22 of The Ombudsman Act, 1975, that the Board's refusal to grant a clothing allowance to the complainant was "unreasonable". Accordingly, he recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the decision of the Workmen's Compensation Board be revoked and that the complainant be awarded a clothing allowance pursuant to Section 51(3)(b) of The Workmen's Compensation Act. This recommendation was forwarded to the Workmen's Compensation Board and a copy sent to the Minister of Labour on September 29, 1978. The Board responded by letters dated October 19, 1978 and November 2, 1978 that further investigation of this case would be required before a formal response to the recommendation could be made.

On March 7, 1979 the Vice-Chairman of Appeals proposed a meeting between some members of the Ombudsman's staff and some members of the staff of the Workmen's Compensation Board to discuss this case. This meeting took place on April 3, 1979.

On May 1, 1979 the Ombudsman again wrote to the Board and repeated his opinion that the complainant should have entitlement to a clothing

allowance. The Ombudsman pointed out at that time that a case similar to that of the complainant had previously been allowed by the Board.

On June 28, 1979 the Vice-Chairman of Appeals replied to the Ombudsman's letter and stated, in part:

> "The Corporate Board has accepted and will implement the interpretation of the section as expressed in your letter, that the purpose of the section was to compensate for damages to clothing caused by any back brace or support and that the word "brace" should be given its broad meaning."

The Chairman also wrote to the Ombudsman on June 29, 1979, attaching a copy of a new Appeal Board decision in the complainant's case. This decision stated, in part:

> "The Appeal Board consequently concludes that (the complainant's) back brace falls within the definition and that he has entitlement for the payment of a clothing allowance upon establishment of the damage to clothing as contemplated by Section 51(3)(b)."

> Because the Board's decision to implement the Ombudsman's recommendation was a satisfactory resolution of this complaint, the file was closed. However, in October, 1979, it came to the Ombudsman's attention that rather than grant a clothing allowance retroactive to the date of the complainant's initial application, May, 1976, the Board implemented the clothing allowance only from June, 1979. As a result, further representations were made to the Board and to the Minister of Labour and in February, 1980, the Office was advised that the clothing allowance would be paid effective from May, 1976.

> Accordingly, the Board and the complainant were advised of the Ombudsman's findings.

DETAILED SUMMARY NO. 24

In May of 1966 this complainant was employed as a harbourmaster when he experienced pain in his right groin while trying to raise a drowning man from the water by pulling a rope attached to the body. He was initially treated by his family physician, a general surgeon, in May of 1966 for complaints of pain in his right lower abdomen and groin. A right inguinal hernia was diagnosed and he was admitted to hospital in August, 1966 for surgical repair. Prior to surgery, attempts were made to bring his obesity and chronic bronchitis under control.

By September, 1966 his weight had been reduced by 30 pounds and his bronchial condition was sufficiently in check to allow a right inguinal hernia repair to be performed. Following the operation the complainant experienced pulmonary emboli and recovery from this was complicated by a paralytic ileus and an acute dilirium.

He was discharged from hospital at the end of September, 1966 and returned to his regular work early in November, 1966 fully recovered from his hernia repair and post-operative complications.

Initially the claim for entitlement to benefits for a right inguinal hernia was denied by the Board due to a delay in the employer reporting the accident to the Workmen's Compensation Board and discrepancies concerning the onset of pain. It was not until August 1975 that the claim for a right inguinal hernia was allowed at the second level of appeal and Temporary Total Benefits were paid from the first date of layoff in August of 1966 until his return to work in November, 1966.

In November of 1975 the complainant, through his solicitor, advised the Board that he was claiming a permanent disability award for the effects of the pulmonary emboli he experienced subsequent to his hernia repair in 1966.

The complainant was referred to a specialist in Internal Medicine and Respiratory Disease by the Board. He reported in October, 1976 that there were non-compensable factors contributing to the complainant's present condition and that a permanent long-lasting effect from the pulmonary emboli 10 years ago was highly questionable. This specialist stated that he personally doubted that the pulmonary emboli experienced in 1966 could play a role in the complainant's present symptomatology.

After reviewing this report the Board's medical advisor expressed the opinion that the complainant did not have any residual disability from his pulmonary emboli nor was there a permanent disability.

In November of 1966 the complainant's claim for a Permanent Partial Disability Award in recognition of residual disability from his pulmonary emboli was denied by the Claims Review Branch. The complainant appealed this decision. The Appeal Board ruled that:

> "A casual relationship of the bronchitic state to the compensable accident or the subsequent pulmonary emboli has not been established".
>
> The Appeal Board also ruled that:
>
> "The evidence did not establish a residual disability as a result of the compensable accident and the subsequent complications".

On his own initiative the complainant was examined by a specialist in Internal Medicine in November of 1977 who said that he did not believe there was evidence of impaired pulmonary function or that the emboli had aggravated his obstructive airways disease which he considered to be almost certainly cigarette-induced.

After requesting a reconsideration of the Appeal Board Decision which was denied the complainant contacted the Office of the Ombudsman to register a complaint. As the complainant had exhausted his full appeal rights at the Board, the complaint was within the Ombudsman's jurisdiction to investigate. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was informed of the Ombudsman's intention to investigate the complaint.

The investigation of this complaint involved a thorough examination of the Board's file, several telephone interviews and a personal interview with the complainant.

Based on the medical opinions and the existence of the pre-existing condition the Ombudsman was unable to describe the Board's decision as "unreasonable, unjust, oppressive or improperly discriminatory." The complainant, his M.P.P. and the Board were notified of the results of the investigation and the file was closed.

DETAILED SUMMARY NO. 25

On March 17, 1976, the complainant sustained a compensable back injury when a sheet of steel plate fell and pinned him against a support bar. He was admitted to hospital where he remained for one week. Entitlement was granted by the Workmen's Compensation Board for a contusion and strain of the back and contusion of the right inguinal area. X-rays of the lumbar spine showed no abnormality. An orthopaedic surgeon indicated, "patient in all likelihood has had a contusion that should resolve quite nicely without any complete deficit".

On April 13, 1976, the complainant was examined by a neurosurgeon who found no evidence of disc herniation and was of the opinion that the complainant would be able to return to work in two to three weeks. Two further assessments by this specialist in May and June of 1976 indicated that the complainant had made progress insofar as his back injury was concerned. His major difficulty, according to the specialist, seemed to be one of extreme anxiety about his overall condition and his ability to return to work. The specialist prescribed drugs to alleviate the anxiety.

The complainant continued to receive total disability benefits and on August 31, 1976, he was examined by the Board's medical advisor. The physical examination revealed that he had recovered relatively well from his compensable injuries. The most predominant factor hampering his return to work was a psychological disability which manifested itself in anxiety and depression. For these reasons, the worker was admitted to the Board's Psychological Evaluation Module at its Hospital in Downsview on August 31, 1976.

Psychiatric examination at the hospital revealed that the complainant was distressed because of family problems. The psychiatrist reported that the complainant showed no objective evidence of anxiety although his symptoms were indicative of persistent anxiety.

A further review by the Board's orthopaedic consultant failed to reveal any physical abnormality or evidence of post-traumatic pathology. The surgeon was of the opinion that, judging from the complainant's description of his symptoms and the bizarre reaction to his accident, he was "100% psychosomatic so far as his problems are concerned". Although complaint of diffused pain in the lumbar area and weakness persisted, the orthopaedic specialist was of the view that "this man's scare or fright of his accident has produced initially and is continuing to produce a hysterical-like psychosomatic reaction".

The worker was discharged from the Board's hospital on September 24, 1976 with the recommendation that the Board's Rehabilitation Department help him in finding suitable work. The Board extended benefits under Section 41(1)(b) of The Workmen's Compensation Act until December, 1976, to assist the complainant in returning to the workplace.

The file was referred to the Vocational and Rehabilitation Branch and attempts were made both by the complainant and the rehabilitation counsellor to return him to the accident employer. However, because of the worker's continued complaints of severe disability, the company was reluctant to rehire him in any capacity. Although the complainant was made aware that the medical reports indicated that any physical disabilities had been resolved and any continuing problems were of a psychological nature, the complainant indicated that he believed himself to be almost or totally disabled. He stated that he had continuous severe pain in the lumbar region and any efforts on the Board's behalf to terminate his benefits would probably result in his attempting suicide.

Although benefits were not extended beyond December, 1976, involvement by the Rehabilitation Department continued well into 1977. The Board's rehabilitation counsellor visited the factory premises and found the job offered by the accident employer was less strenuous than other jobs in the factory. The company's coordinator pointed out to the rehabilitation counsellor that since the complainant's job was classified as light duty and taking into account the fact that the worker felt he could not perform these duties, there was little the company could offer him as alternate employment.

The extensive efforts of the Rehabilitation Department, together with the involvement of the complainant's M.P.P., to return the complainant to work proved totally unsuccessful in view of the injured workman's attitude and his continuing belief of his total disability.

On April 19, 1977, the complainant appeared before the Appeal Board of the Workmen's Compensation Board requesting entitlement to payment of total disability benefits subsequent to December 30, 1976 and entitlement for a psychological disability diagnosed as anxiety with depression. By a decision dated May 16, 1977, the appeal was denied.

On June 21, 1978, the complainant's M.P.P. wrote to this Office on his behalf and requested that the Ombudsman investigate this complaint.

We determined that the complainant had exhausted all rights of appeal. Accordingly, pursuant to Section 19(1) of The Ombudsman Act,

1975, the Chairman of the Workmen's Compensation Board was notified by letter dated July 17, 1978 of the Ombudsman's intention to investigate.

Upon receipt of the photocopy of the Board's file, the documentation was thoroughly reviewed. The complainant was also interviewed.

Based on the results of our investigation, the Ombudsman was unable to support the complainant's request for extension of benefits beyond December, 1976. This decision was reached after an assessment of the medical information on file, the records of the Rehabilitation Department, and discussions with the complainant. The Ombudsman was compelled by the facts to state that the Board acted very responsibly in attempting to assist the complainant.

The Ombudsman was also unable to support the request for psychological entitlement because the information available suggested that the anxiety condition pre-existed his accident and was more characteristic of his personality make-up and his domestic situation rather than a condition which could be directly attributed to the accident.

In a report dated October 26, 1979, the Ombudsman informed the complainant as well as the Member of Parliament and the Workmen's Compensation Board of his decision not to support the complaint and proceeded to close the file.

DETAILED SUMMARY NO. 26

In April, 1971, the worker reported to the Board that he suffered a back injury at work in March, 1971. On receipt of this report, the Board requested an employer's report of accident. The employer advised the Board that the complainant had been suffering from a degenerative osteoarthritic condition of the lower back for several years and that, as a result, he had lost a considerable amount of time from work. At the request of the company doctor, the employer gave the worker modified duties in January, 1968. He remained in this position until March, 1969 when he was replaced by an employee with more seniority. During the period March, 1969 to March, 1971, the complainant continued to complain of back pain and received medical attention from his family physician.

In order to determine if the complainant was entitled to compensation benefits as a result of an accident at work in March, 1971, the Board conducted an investigation. The complainant informed the Board's investigator that in March, 1971, as he bent forward to pick up a shovel full of nuts and bolts, he gave the shovel a hard push under a pile and felt a click in his back. He was unable to straighten up. He went to the company's first aid department and reported what had happened and was given heat treatment. He laid off work that same day. This incident was witnessed by several of his co-workers, who confirmed his account of the accident when they were questioned by the Board's investigator.

In April, 1971, the family physician diagnosed the complainant's disability as an acute lumbar strain. When he was questioned by the Board's investigator, his family physician confirmed that he had been treating the complainant for several years for a chronic back problem. He also added that when he saw the complainant in March, 1971, he had more severe pain than when he was previously examined. He stated that the complainant's incident at work caused a flare-up of his pre-existing condition and was attributable to his work incident that day.

The complainant's file was reviewed by one of the Board's consultants in September, 1971 who concluded that the incident at work was too minor to be an aggravation. The complainant appealed this decision. In August, 1977, the Appeal Board ruled that "...the work being performed ... was in fact his regular employment and ... the mere act of bending over to pick up a shovel full of nuts and bolts cannot be considered as an accidental or unusual occurrence within the provisions of the Act." The Appeal Board also stated that "subsequent medical documentation confirms that (the complainant's) ongoing disability is entirely due to the diagnosed condition of degenerative disc disease from which the complainant was suffering prior to March, 1971".

The complainant's solicitor complained to our Office about the Appeal Board's decision. Our Office contacted the complainant and confirmed his complaint. Pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was informed of the Ombudsman's intention to investigate. After receiving a photocopy of the Board's file the investigator reviewed all of the information and contacted the complainant.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was informed that based on our investigation to that point, there appeared to exist sufficient grounds for the making of a report or recommendation that could adversely affect the Board. The Board was invited to address itself to the Ombudsman's possible conclusions and possible recommendations as follows:

"Possible Conclusions

1. It would appear that it might be open to me to conclude pursuant to Section 22(1)(c) of The Ombudsman Act, 1975 that the Appeal Board's decision is based on mistakes of fact.

2. It would appear to be open to me to conclude pursuant to Section 22(1)(b) that the Appeal Board was unreasonable not to have decided that (the complainant) did suffer an accident at work under Section 1(1)(a)(ii) of The Workmen's Compensation Act.

Possible Recommendation

It would appear that it might be open to me to recommend, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Appeal Board

revoke its decision of August, 1977, grant entitlement and award the appropriate benefits for (the complainant's) back disability as a result of an accident within the provisions of Section 1(1)(a)(ii) of The Workmen's Compensation Act .

If the Board accepts that an incident occurred at work in March, 1971 but if in the Board's opinion compensation cannot be awarded for the incident pursuant to Section 1(1)(a)(ii), then I would request that the Board consider an alternative view of the facts of this case which, in my opinion supports entitlement on the basis of disablement arising out of and in the course of employment under Section 1(1)(a)(iii) of The Workmen's Compensation Act".

The following possible conclusions and possible recommendations relate to this alternative view:

Possible Conclusions

1. It would appear that it might be open to me to conclude pursuant to Section 22(1)(c) of The Ombudsman Act, 1975 that the Appeal Board's decision is based partly on a mistake of law relating to what is deemed to be an "accident" under Section 1(1)(a)(iii) of The Workmen's Compensation Act.

   While it may be true that (the complainant's) pre-existing back condition was not caused by his work, it does not necessarily follow that the "disablement" which immediately followed the incident of March, 1971 was also, in the words of the Appeal Board, "entirely due to the diagnosed condition of degenerative disc disease from which (the complainant) was suffering prior to March, 1971." Rather, it is my tentative opinion that the disablement on that day was caused by the shovelling incident which aggravated his pre-existing condition and should be deemed to be an accident.

2. It would also appear that it might be open to me to conclude pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the Appeal Board in its decision to deny benefits under Section 1(1)(a)(iii) of The Workmen's Compensation Act was unreasonable in that it did not appear to have considered:

- whether there was any other rational explanation for backstrain manifested in the course of employment;

- whether the injury occurred as a result of a work-required motion arising out of and in the course of his employment;

and did not conclude that the disablement arose out of and in the course of (the complainant's) employment.

It seems to me that the present Board policy relating to Section 1(1)(a)(iii) does not preclude entitlement in this claim. It is my understanding that there must be something about the work which can be considered to have caused the disability to come on and that, in keeping with this policy, a movement arising out of the work which can be reasonably considered to have caused the disablement is sufficient.

Therefore, I am also of the tentative opinion that (the complainant's) claim falls within the acceptable limits of current Board policy.

Possible Recommendation

It would appear that it might be open to me to recommend pursuant to Section 22(3)(g) that the Appeal Board revoke its decision, grant entitlement and award appropriate benefits for the aggravation of (the complainant's) back condition as a result of disablement arising out of and in the course of his employment within the provisions of Section 1(1)(a)(iii) of The Workmen's Compensation Act."

The Workmen's Compensation Board responded in November, 1979 by stating that the Appeal Board had revoked its previous decision. The new decision read, in part, as follows:

"Having reviewed all the available information and reconsidered the matter in the light of the possible conclusions and possible recommendations of the Ombudsman, the Appeal Board now finds that (the complainant) aggravated his pre-existing degenerative back condition by accident arising out of and in the course of his employment in March, 1971.

Medical information and employment history indicates that (the complainant's) pre-existing back condition had limited him to light work for some years prior to the accident of March, 1971. A report of an

> orthopaedic consultant in March, 1972 stated that (the complainant) was fit for most types of light work.
>
> The Appeal Board now concludes that (the complainant) aggravated his pre-existing back condition by accident in employment in March, 1971 and is consequently entitled to disability benefits from that date until medical information indicates that that aggravation had ceased."

The Appeal Board decision of November, 1979, has resolved the complainant's complaint against the previous Workmen's Compensation Board's Appeal Board decision. The complainant and his solicitor were advised that the Chairman of the Workmen's Compensation Board had agreed to give effect to the Ombudsman's tentative recommendation.

DETAILED SUMMARY NO. 27

In January, 1961, the complainant injured his lower back while attempting to lift an iron bar weighing approximately 100 pounds. Temporary total disability benefits were paid from the date of the accident until September, 1961, when they were reduced to 50%. A further reduction to 25% occurred in October, 1961. In November, 1961, the complainant was admitted to hospital and spinal surgery was performed. During this period of hospitalization, the complainant was seen by a psychiatrist who observed that he was showing some reactive depression. Temporary total benefits were restored when the complainant was admitted to the hospital.

In April, 1962 the Workmen's Compensation Board referred the complainant to a neuropsychiatrist who considered that his neurosis was largely due to his compensable injury. This view was also shared by another psychiatrist who saw the complainant in May, 1962. The Board, however, did not allow for any psychological disability at that time; the worker was granted a six-month provisional lump sum award of 10% for his residual organic disability which was later confirmed on a permanent basis.

The worker's condition apparently remained relatively unchanged until November, 1965 when the family doctor informed the Board that the complainant had suffered a recurrence of his back problems. A subsequent re-examination by the Board resulted in an increase of the permanent disability award to 15% effective August, 1965. After further re-examination by the Board in June, 1966, the Board accepted some responsibility for the complainant's psychological disability. Accordingly, an additional 22.5% was granted, making the total permanent disability award 37.5%.

Reassessments of the complainant's condition were carried out on two more occasions; however, no further increases were recommended. From November, 1969 to January, 1970, the complainant received treatment at the Board's Hospital and Rehabilitation Centre. Following his discharge

from the Centre, he appealed the level of the permanent disability rating and the Appeal Board appointed a neuropsychiatrist as a Medical Referee. This doctor's opinion was that the overall disability (physical and psychiatric) was 40% and entirely attributable to the accident of January 16, 1961. The increase to 40% was made retroactive to August, 1965.

Further reviews of the case were conducted in 1973 and it was determined that the complainant's condition had deteriorated. The Appeal Board, therefore, increased the award to 100% retroactively to December, 1971, the date of the last admission to hospital. A further appeal by the complainant resulted in the 100% disability award being made retroactive to January, 1970, the last time the complainant had received temporary total benefits for his stay at the Hospital and Rehabilitation Centre.

The complainant then applied for an Attendance Allowance because he was of the opinion that he needed constant care and attention from his wife. He also disputed the dollar amount of his permanent disability award, contending that he should have been receiving the minimum of $400.00 for himself, plus $286.00 for his wife and $77.00 for each of his three dependent children. The Appeal Board decision of May 19, 1976 concluded that the criteria for Attendance Allowance under Section 51(1)(c) of The Workmen's Compensation Act had not been met and that the pension had been correctly calculated under Section 43(c).

On June 27, 1977, the complainant brought his complaint to the attention of our Office. His contentions were as follows:

1. The Workmen's Compensation Board had not correctly calculated the dollar amount of his 100% permanent disability award.

2. He should have been entitled to an Attendance Allowance under the terms of Section 51(1)(c) of The Workmen's Compensation Act.

3. The 100% permanent disability award should have been made retroactive to January 16, 1961, the date of his accident, or alternatively, August 6, 1965, the date of the previous pension increases.

4. Temporary total benefits should have been granted for the periods September, 1961 to November 2, 1961 rather than the temporary partial benefits of 50% and 25% which were awarded.

Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was informed of the Ombudsman's intention to investigate these complaints.

The investigation of this complaint involved interviews with the complainant and his orthopaedic specialist, as well as contact with various officials at the Workmen's Compensation Board. In addition, the Board's file was thoroughly examined.

During the course of the investigation, it appeared that the Board was acting in accordance with the terms of The Workmen's Compensation Act when the dollar amount of the complainant's pension was determined.

However, with respect to the complainant's three other contentions, it appeared that there existed sufficient grounds for the making of a report or recommendation that could adversely affect the Board. Accordingly, on January 23, 1979, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Ombudsman afforded the Board the opportunity to make representations concerning the following possible conclusions and possible recommendations:

"Possible Conclusions

1. It would appear that it might be open to me to conclude, pursuant to Section 22(2) of The Ombudsman Act, 1975, that the Appeal Board's reasons for its decision not to grant (the complainant) an Attendance Allowance should have been given; in my opinion, adequate reasons were not given by the Appeal Board in its decision dated May 19, 1976.

2. It would appear that it might be open to me to conclude, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board's decision not to grant (the complainant) benefits for his psychological disability during the period May 8, 1962 to August 6, 1965 was unreasonable. This decision is contained in a letter from the Registrar of Appeals dated December 31, 1974.

In support of this possible conclusion, I refer to the following reports which indicated that a psychiatric disability was evident during the period in question:

(a) a medical report dated March 12, 1962 from (a psychiatrist) which states that (the complainant) was, at that time, suffering from anxiety, tension and a mild depression;

(b) a medical report dated April 10, 1962 from (a neuropsychiatrist) to whom (the complainant) was referred by the Board, which indicates that (the complainant's) anxiety and depression were largely due to his compensable injury;

(c) a medical report dated May 22, 1962 from (a psychiatrist) suggesting that (the complainant's) back injury had either aggravated or produced his emotional upset.

3. It may be open to me to conclude, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board's decision not to award temporary total benefits from September 5 to November 2, 1961 was unreasonable.

In support of this possible conclusion, I refer to a report from (the complainant's) orthopaedic surgeon, dated March 27, 1962, which states:

> 'Two problems are brought up by the patient, firstly he tells me that during the month of September he received 50% compensation pay and during the month of October 25%. This was during a period prior to surgery and it would seem reasonable that he was entitled to full compensation at this time'.

Possible Recommendations

1. It would appear that it might be open to me to recommend, pursuant to Section 22(3)(f) of The Ombudsman Act, 1975, that the Appeal Board provide (the complainant) with reasons for its rejection of his application for an Attendance Allowance under Section 51(1)(c) of The Workmen's Compensation Act.

2. It would appear that it might be open to me to recommend, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Appeal Board revoke its decision of December 31, 1974 and grant (the complainant) benefits for psychological disability for the period May 8, 1962 to August 6, 1965.

3. It would appear that it might be open to me to recommend, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Appeal Board revoke its decision dated May 11, 1970 and grant (the complainant) temporary total benefits for the period September 5 to November 2, 1961."

In response to the Ombudsman's possible recommendations, the Appeal Board rendered a new decision dated March 23, 1979, which implemented his recommendations as follows:

> "1. The Appeal Board, therefore, gives reasons for the rejection of (the complainant's) application for Attendance Allowance under Section 51(1)(c). Attendance Allowance is payable where an injured employee is rendered helpless through permanent total disability resulting from an industrial accident. Attendance Allowance is paid for the following disabilities:
>
> Blindness.

Double Arm Amputee.

Double Leg Amputee, necessitating confinement to a wheelchair, with added difficulties due to level of amputation, age, or other disabilities.

Head Injury requiring supervision.

Spinal Cord Injury, Paraplegia or Hemiplegia requiring wheelchair confinement.

Quadriplegia, partial with ability to walk aided by braces, canes, and crutches. Due to upper limb disability and/or spasticity of the lower limbs requiring assistance to dress, bathe and in toilet functions, enemas, etc.

The Appeal Board recognized that (the complainant) has a permanent total disability, however, the nature of his disability does not fall within the classifications requiring attendance for which an allowance is paid.

2. The Appeal Board directs that the forty per cent permanent partial disability award which was granted effective August 6, 1965, be implemented retroactively for the period, May 8, 1962 to November 6, 1962, and that the permanent partial disability award of ten per cent dating from November 6, 1962 be increased to forty per cent from November 6, 1962 to August 6, 1965.

3. The Appeal Board further directs that the temporary partial disability benefits awarded at the rate of fifty per cent from September 5, 1961 to October 3, 1961, and at the rate of twenty-five per cent from October 3, 1961 to November 2, 1961, be adjusted to temporary total disability benefits for the period, September 5, 1961 to November 2, 1961."

On June 7, 1979, a final report was sent to the complainant and to the Board indicating that, in view of the information available and his findings through investigation, the Ombudsman considered the Board's implementation of his possible recommendations to be a reasonable solution to the issues of the complaint.

DETAILED SUMMARY NO. 28

October 3, 1975, this complainant was struck on the right shoulder and right side of the neck by a cement truck chute while working as a carpenter on a construction site. He immediately felt pain in his shoulder and neck, and also felt slightly dizzy, but he continued working. However, later that day, the construction company terminated the complainant's employment.

It had always been the complainant's contention that he had seen his family doctor within a week of his accident; however, no record of a visit existed prior to December 1, 1975. The doctor later reported to the Board that it was "most likely" that the complainant did visit his office and complain of neck pain between October and December, 1975, but he did not record the information.

In July, 1976, the complainant was admitted to hospital with numerous complaints including bronchitis, cardiac failure, obesity, vertigo and neck pain which had been present for some time. X-rays revealed osteophytic encroachment at C3-4 and C4-5, as well as degenerative changes in the thoracic spine. An orthopaedic surgeon who examined the complainant was of the opinion that the arthritis in his cervical spine had probably antedated his accident at work, but had been aggravated by this injury.

The Workmen's Compensation Board did not become aware of the claim until September of 1976. Apparently, the complainant had reported the accident to his foreman and his union in 1975 and expected that the Board would be informed, but this was not done. When the Board contacted the company for further information, the company denied having any knowledge of the accident. Subsequently, the Board carried out an investigation which revealed that a fellow worker had witnessed the accident as described by the complainant.

On March 24, 1977, the complainant was examined by a neurosurgeon who reported to the Board that the complainant's cervical spondylosis had been "undoubtedly aggravated by the accident in October, 1975". The neurosurgeon had examined x-rays taken in 1975 and compared them with others taken in March of 1977. In November, 1977, the neurosurgeon expressed the opinion that the complainant's accident had aggravated a pre-existing condition and had accelerated the advancement of his osteo-arthritis. The complainant had facet joint blocks done at this time which relieved some of his pain.

On November 28, 1977, the orthopaedic surgeon also reported that the complainant's accident had aggravated a pre-existing condition of cervical spondylosis and had precipitated his nerve root irritation. The orthopaedic surgeon and a specialist in internal medicine were both of the opinion that, regardless of his other health problems, the disability in his neck was reason enough for the complainant to be disabled from returning to work as a carpenter.

The complainant had been denied compensation benefits and, at the Appeal Board hearing held on December 7, 1977, it was directed that his file be reviewed by the Board's Surgical Consultant. In the Consultant's opinion, the Board would not be justified in accepting the complainant's cervical

complaints under the claim. Therefore, in its decision of January 12, 1978, the Appeal Board accepted that the accident, as described by the complainant, had taken place on October 3, 1975, but it concluded that there was "no evidence to relate (the complainant's) disability to that accident".

On April 28, 1978, the complainant contacted our Office to complain against the Appeal Board decision which had been rendered in his claim. Accordingly, on June 8, 1978, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was advised of the Ombudsman's intention to investigate the complaint. The investigation of this complaint involved a complete examination of the Board's file and interviews with the complainant.

During the course of the investigation, it appeared to the Ombudsman that there existed sufficient grounds for the making of a report or recommendation which could adversely affect the Board and the accident employer. Therefore, on May 14, 1979, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board and the accident employer were given the opportunity to make representations concerning the following possible conclusions and recommendations:

"Possible Conclusions

1. It would appear that it might be open to me to conclude pursuant to Section 22(1)(d) of The Ombudsman Act, 1975, that the Appeal Board was wrong to conclude in its decision of January 12, 1978 that there was no evidence to indicate that (the complainant's) disability is related to the accident of October 3, 1975.

   It appears that evidence from medical practitioners supporting (the complainant's) contention does exist and was presented to the Appeal Board at the hearing.

   In support of this possible conclusion, I refer to the following:

(a) an undated medical report from (the orthopaedic surgeon) which is attached to his letter of September 9, 1976 which states that (the complainant's) osteoarthritis was aggravated by his injury;

(b) a medical report dated May 30, 1977 from (the neurosurgeon) indicating that (the complainant) suffered from cervical spondylosis undoubtedly aggravated by the accident in October, 1975;

(c) a letter dated November 21, 1977 also from (the neurosurgeon) stating that the accident accelerated the advancement of (the complainant's) osteoarthritis;

(d) a letter dated November 28, 1977 from (the orthopaedic surgeon) which indicates that the complainant's accident was sufficient to cause his condition to become symptomatic and precipitate his nerve root irritation; and

(e) a letter dated November 30, 1977 from (the specialist in internal medicine) indicating that (the complainant's) cervical symptoms had probably been exacerbated by his accident in 1975.

2. It would appear that it might also be open to me to conclude, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that it was unreasonable of the Appeal Board to decide that the evidence referred to above was not sufficient to establish a relationship between (the complainant's) cervical disability and his accident of October 3, 1975. Since the Appeal Board accepted that this accident, as described by (the complainant), did, in fact, take place, it is my tentative opinion that the statements of the medical specialists who treated him should also have been accepted and the claim allowed.

Possible Recommendations

1. It would appear that it might be open to me to recommend, pursuant to Section 22(3)(c) of The Ombudsman Act, 1975, that the Appeal Board vary its decision dated January 12, 1978 and grant (the complainant) Temporary Disability Benefits from the date of his accident until such time as medical evidence indicates that (the complainant's) condition stabilized.

2. It may also be open to me to recommend that (the complainant) then be granted a Permanent Disability Award which should be determined by the Board."

The accident employer responded in a letter dated June 14, 1979 and indicated that he was unaware that an accident had occurred until the Board contacted him in October of 1976. He did not feel that the complainant should be granted compensation benefits and, in his opinion, the decision of the Board should remain unchanged.

The Board's response dated June 26, 1979 indicated that because there was no established evidence that the complainant had sought medical attention for a neck disability until December 1, 1975, the Board was of the opinion that the underlying degenerative condition was the cause of the disability. The response stated, in part:

"On the basis of the medical and other information currently available, the Appeal Board panel is unable to conclude that (the complainant's) continuing cervical disability was causally related to or significantly aggravated by the accident of October 3rd, 1975, and the panel is therefore unable to accept the recommendations set out in your letter of May 14th, 1979."

The Ombudsman considered the argument raised by the Board. Although there was no recorded evidence of the complainant's seeking medical attention until December 1, 1975, the family doctor thought that it was "most likely" that he had complained to him of neck pain prior to this date. The family doctor stated to the Board's investigator that he was more concerned with treating the complainant's serious bronchitis than his complaints of neck and shoulder pain which were also noted. While the complainant did indeed have a pre-existing condition of degenerative disc disease, the specialists who treated him were all in agreement that this condition was aggravated and rendered symptomatic by the accident of October 3, 1975. The complainant's other health problems, while contributing to his overall disability, did not change the fact that these doctors stated that his condition of cervical spondylosis was sufficient to disable him from performing his job as a carpenter.

Establishing whether or not an accident had taken place was not an issue in this case, since the Appeal Board had already accepted that an industrial accident, as described by the complainant did, in fact, occur on October 3, 1975. Having accepted this, it was the Ombudsman's opinion that it was quite clear that the medical evidence supported a relationship between the accident and the complainant's continuing cervical disability.

Accordingly, a report, pursuant to Section 22(3) of The Ombudsman Act, 1975, was sent to the Board on September 18, 1979. The Ombudsman recommended that the Appeal Board vary its decision dated January 12, 1978 and grant the complainant temporary disability benefits from the date of his accident until such time as medical evidence indicated that his condition stabilized. It was also recommended that the complainant should then be granted a permanent disability award in an amount to be determined by the Workmen's Compensation Board. A copy of the report was also sent to the Minister of Labour.

In response to the report, the Ombudsman received a letter from the Board dated November 13, 1979. This letter stated that the Board was of the view that a conflict of medical opinion existed between the specialists who had examined the complainant and the Board's own Surgical Consultant. The Board further advised that it would appoint a medical referee who would be asked to make a report in accordance with the provisions of Section 22(2) of The Workmen's Compensation Act.

In correspondence dated November 28, 1979, the Ombudsman advised the Board that, in his opinion, the appointment of a medical referee was neither appropriate nor justified because the Board already had sufficient evidence to enable it to make a decision in the complainant's favour. The Ombudsman also informed the Board that, had a genuine conflict of medical opinion existed, the appropriate referral would have been to the three-man Medical Panel which had been previously discussed with the Minister of Labour. The Ombudsman requested a formal response to the recom-

mendations outlined in his report and advised the Board that if no response was received within two weeks, he would proceed in accordance with Section 22(4) of The Ombudsman Act, 1975 and send a copy of his report to the Premier. No response was received to our letter and the Board proceeded with the referral to a medical referee who examined the complainant on January 29, 1980.

The Ombudsman postponed sending his report to the Premier because the Ombudsman had made arrangements to discuss this case with the Minister of Labour on February 7, 1980. However, following this meeting, the Board still did not provide the Ombudsman with its response and, therefore, on March 14, 1980, he forwarded his report to both the Premier and the complainant. On this date, a letter was also sent to the Chairman of the Workmen's Compensation Board advising him of the Ombudsman's actions.

The Ombudsman then received a letter, dated March 17, 1980, from the Board which stated, in part:

> "In addition to the reasons given by the Appeal Board in its response to your Section 19(3) letter, the Board now has the benefit of (the) report (of the) medical referee. I understand that ... your office has been provided with a copy of this report. (The medical referee) in addition to examining (the complainant) personally on January 29th, 1980, reviewed all of the medical documentation and investigation notes, as well as your submissions. His opinion after considering all the relevant data was that:
>
> > 'While it is enticing to assume a cause and effect relationship in this problem, I believe there is no hard evidence that such a relationship exists. To assume even a possible relationship is, at best, guesswork.'
>
> The Board agrees that the statement of the Appeal Board in its decision of January 12th, 1978 that 'there is no evidence' et cetera was wrong. There is some such evidence as expressed in the medical opinions of the doctors you have quoted. However in the view of the Board those opinions are not supported by any explanation of why and how those doctors reached the conclusion that a relationship existed given the absence of evidence of continuing complaint or medical attention.
>
> In the view of the Board, the opinions of the Surgical Consultant of the Board, now supported by that of the medical referee chosen by (the complainant), explain why no relationship between the October incident and the subsequent cervical disability should be assumed. The Board therefore considers these

> reasoned conclusions to be better evidence than the evidence on which you relied in support of your conclusion.
>
> Having considered all the available information, the Board concludes that the weight of evidence supports the position that (the complainant's) cervical disability diagnosed in July, 1976 as 'osteoarthritic changes at C6-7 with right C7 nerve root irritation' was not related to the asccident in employment on October 3rd, 1975, and consequently the decision of the Appeal Board of January 12th, 1978 was not unreasonable.
>
> The Board does not propose, under these circumstances, to implement your recommendation."

The Ombudsman advised the complainant that his case would be included in the Ombudsman's next Report to the Legislature and proceeded to close the file.

DETAILED SUMMARY NO. 29

The complainant had been employed with a construction company for approximately six months when, on May 29, 1959, a barrow of rubbish which was being lowered from a building came loose and fell to the ground, knocking him down. He sustained a compound fracture of the left tibia and fibula, a laceration of his right upper eyelid, multiple abrasions of his face and right hand, contusion and abrasion of his right shoulder, and direct back trauma. The major injury was the fracture of his left leg; however, the complainant was examined by a neurosurgeon because he had suffered some trauma to the right side of his forehead and face. Skull x-rays were taken and revealed no abnormality. It was noted that the complainant had a traumatic mydriasis of his right eye and some fluid draining from his left ear for the first day or two following the accident. There were, however, no neurological abnormalities.

The complainant received physiotherapy treatments at the Board's Hospital and Rehabilitation Centre from October 28 to December 15, 1959. He made good progress and temporary total benefits were paid from the date of the accident until March 7, 1960 when he was able to return to work. Some further problems with his left leg caused the complainant to lay off work from June to October, 1960. In 1963, he began working as a lift truck operator. Following a Board examination on October 1, 1975, a 3% Permanent Disability Award was granted for the left leg.

No mention of any ear disturbances had appeared in the medical reports at the time of the accident. The Board first became aware that the complainant was experiencing a problem with his left ear in December, 1974 when he wrote requesting compensation. The Board then made inquiries and obtained medical reports relating to this condition.

The Board found that the first record of any complaint regarding his ear was on October 2, 1969 when he saw the company nurse. The following day he complained of dizziness and was referred to an otolaryngologist who reported that he was complaining of a "humming tinnitus" in his left ear and dated the onset of his symptoms to a head cold about five days previously; no mention of a previous injury to his ear was made at the time. Examination revealed that both eardrums were scarred and retracted. The left eardrum was perforated and there was a slight hearing loss in both ears. On September 16, 1970, another ear specialist had performed surgery to remove the tympanosclerosis from the complainant's left ear and to correct the perforation.

The Board also contacted the neurologist who had examined the complainant following his accident. This neurologist had mentioned in an early report that "serosanguineous" fluid had drained from the complainant's left ear immediately following the accident, and the Board wished to verify this. The neurologist checked the records for the period of hospitalization following the accident. The resident's history, which was written on the day of the accident, indicated that a thin, purulent discharge from the left ear had been noted and its source had not been identified. There was no mention of bleeding from the ear. A culture taken the next day had shown the presence of bacteria. It was the opinion of the neurologist that such findings would indicate long-standing, pre-existing ear trouble.

The Board requested the opinion of the otolaryngologist who had performed the surgery on the left ear in 1970. At the time of the operation, the surgeon had noted that the mastoids were poorly pneumatized on both sides and the tympanic membranes were scarred and retracted. In his opinion, these findings were indicative of previous ear infection, probably some time in childhood, and he felt that the complainant's ear problem had been present prior to the accident that was sustained in May of 1959.

Based on this information, on September 15, 1975, the Claims Review Branch rejected the claim for hearing loss. The complainant then contacted his Member of Provincial Parliament for assistance with an appeal. The Member's Office submitted a letter to the Board from the first otolaryngologist who had examined the complainant in 1969 stating that it was "conceivable" that following a "severe" head injury, an injury to his ear could have gone unnoticed.

The Appeals Adjudicator directed that the case be referred to an independent specialist in otolaryngology. This specialist examined the complainant on April 28 and June 8, 1977 and reviewed the medical reports on file. It was his opinion that the ear infection noted at the time of the accident was indicative of long-standing, chronic ear disease and not recent injury. He stated that if any damage had been done at the time of the accident, the complainant should have noted the ear problems within three months following his injuries. In the specialist's opinion, the complainant was suffering from "long-standing chronic otitis media" and his dizziness was the result of Meniere's disease. Consequently, the Appeals Adjudicator also denied the claim for hearing loss.

The Member of Provincial Parliament then contacted an otolaryngologist who had examined the complainant on August 5, 1977. This doctor

stated that there was no doubt that the complainant had chronic inflammatory ear disease which had been present for some time. However, he noted that the disequilibrium had occurred following the injury and he, therefore, related the ear problem to the complainant's "head injury of 1959". This report was submitted to the Appeal Board for consideration at a hearing on December 28, 1977. The Appeal Board, however, was of the opinion that this latest specialist had not had the benefit of reviewing the background material and medical reports in this case. Based on the other medical opinions on file and the comments of its own doctors, the Appeal Board denied the claim. In its decision of February 17, 1978, the Appeal Board concluded that "the disability in the left ear has not been shown to be related to an accident in the employment on May 29, 1959.

In a letter dated March 14, 1978, the Member of Provincial Parliament brought his constituent's complaint against this Appeal Board decision to the Office of the Ombudsman. In accordance with Section 19(1) of The Ombudsman Act, 1975, the Board was advised by letter dated April 4, 1978 that it was the Ombudsman's intention to investigate the complainant's contention that he was entitled to further compensation for the deterioration of hearing in his left ear due to the compensable accident of May 29, 1959.

During the investigation, information was obtained from the complainant and the Board's file was thoroughly reviewed. In addition, one of the complainant's specialists was contacted for information and records were obtained from the hospital where the complainant had received treatment immediately following the accident.

The specialist who had been contacted by the complainant's M.P.P. and who had seen the complainant in August, 1977 was provided with the medical reports on file. This doctor stated that the complainant suffered from chronic inflammatory ear disease involving both ears. However, he thought that he had suffered a severe concussive injury to his head and temporal bone at the time of the accident in 1959 and that the neurologist's reference to "serosangineous" fluid would substantiate this. He believed that dizziness could develop at a later date following such an injury. Since his opinion of the possible relationship between the hearing loss and the accident was based on the premise that a severe head injury had occurred, we obtained the hospital records from 1959 to determine whether such an injury had been incurred.

Examination of the records indicated that the complainant was conscious at the time of his admission to the hospital on May 29, 1959. Neurological examination and skull x-rays revealed no abnormalities. At no time was concussion listed among the various injuries which he had sustained. There was no mention in the records of bleeding from the left ear and the reference to "serosangineous" fluid in the neurologist's early letter was retracted after he had reviewed the resident's notes. When the ear discharge was discovered, a note was made to observe the ear, and the condition was investigated. The discharge was described as purulent and found to be the result of infection. It appeared unlikely that, during this time, an acute injury to the ear would have gone unnoticed. The fact that there were no complaints of ear problems until ten years following the accident also appeared to confirm that no significant ear injury had been sustained.

All the physicians agreed that the complainant suffered from long-standing, chronic inflammatory ear disease and, in the opinion of the majority of the doctors, his hearing loss was attributable to that condition. One doctor attributed it to a concussive head injury at the time of the accident in 1959; however, a review of the evidence disclosed no record of such an injury. It was, therefore, the Ombudsman's opinion that the Board's decision to deny benefits for the hearing loss was not unreasonable.

Accordingly, on January 9, 1980, a report, pursuant to Section 23(2) of The Ombudsman Act, 1975, was forwarded to the complainant, his Member of Provincial Parliament and the Workmen's Compensation Board setting out the reasons why the Ombudsman was unable to support this complaint.

DETAILED SUMMARY NO. 30

In 1966 the worker suffered a back injury at work which was diagnosed as a lumbo-sacral sprain. X-rays taken at that time revealed pre-existing degenerative disc disease. The man returned to work later that year.

In November, 1972 the complainant twisted his back while using a sledge hammer at work. His family physician diagnosed a back strain. He was referred to an orthopaedic surgeon in January, 1973. It was this physician's opinion that the worker was suffering from "...longstanding degenerative disc disease of the lumbar spine..." and he recommended physiotherapy. A myelogram performed in March, 1973 according to the specialist was "...positive for central large disc herniation at L4-L5 level" while x-rays revealed degenerative changes. In April, 1973, the orthopaedic surgeon felt that only surgery would help the complainant's back condition. The complainant was not willing to undergo surgery. By November of 1973, this specialist felt that the complainant's condition had reached a stage of remission and that he was capable of performing some form of lighter work.

The complainant was awarded a permanent disability award rated 20%. In the worker's opinion his compensable disability was greater than that recognized by the Board and therefore he proceeded to appeal the amount of his pension. In July, 1977 the Appeal Board denied the worker's request for an increase because in its opinion his condition had not deteriorated.

The complainant's M.P.P. approached our Office on September 22, 1977 and registered a complaint on behalf of the complainant against the Board's decision. Because the appeal process had been exhausted the complaint was within the jurisdiction of the Ombudsman to investigate. Accordingly a letter pursuant to Section 19(1) of The Ombudsman Act, 1975, was sent to Mr. Starr, Chairman of the Workmen's Compensation Board, notifying him of the Ombudsman's intention to investigate. The investigation involved a complete review of the Board's file and interviews with the complainant.

During the course of the investigation, the Ombudsman formed the tentative conclusion that the Appeal Board acted unreasonably in ruling that the complainant was not entitled to an increase in his Permanent Partial Disability Award of 20%. Accordingly, by letter written pursuant to Section 19(3) of The Ombudsman Act, 1975 the possible conclusion and possible recommendation were reported to the Chairman, as follows:

"Possible Conclusion

1. It would appear open to me to conclude, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board Decision of July 29, 1977 was unreasonable in ruling that (the complainant) was not entitled to an increase in his Permanent Partial Disability Award of 20%.

   I am of the view that this possible conclusion is supported by (the specialist's) report of May 10, 1977 which expressed the opinion that although (the worker) did not have a very significant organic deterioration in his back condition, he was capable of doing only minimal sedentary work.

   I am of the view that this possible conclusion is also supported by (the family doctor's report) of April 18, 1977 which indicated complete disability and clinical deterioration.

   In addition to these medical opinions, I note that the impairment caused to (the complainant's) earning capacity by his accident has been substantial: before the accident he was able to earn the wages of a carpenter; since his accident, he has worked very little and his discharge report from the Hospital and Rehabilitation Centre indicated that he has very poor rehabilitative potential. I am of the tentative view that these facts indicate that the impairment caused to (the complainant's) earning capacity by his 1972 accident is more than 20%, even if assessed on an aggravation basis.

Possible Recommendation

1. It would appear open to me to recommend pursuant to Section 22(3) of The Ombudsman Act, 1975, that the Appeal Board revoke its decision, dated July 29, 1977 and order that (the complainant) receive an increase in his Permanent Partial Disability Award for the results of his residual disability resulting from his accident on November 24, 1972."

The Board replied in October, 1978 by stating that the Appeal Board Panel and the Board saw no reason to alter the decision dated July 29, 1977. The Board's letter read in part as follows:

> "The reports of (the specialist) and (the family doctor) referred to in your letter were considered by the Appeal Board Panel at the time of its decision on July 29, 1977. At that time the Appeal Board Panel also had before it the report of the Consultant on Permanent Disability, who on examining (the worker) on July 18, 1977, determined that there was even less in the way of objective findings to support (the worker's) disability than when he was seen, examined and rated at 20% in 1976. The Appeal Board accepted the assessment of the Pensions Examiner and at this time finds there was no evidence in July, 1977 to justify the possible recommendation that (the worker) receive an increase in his permanent partial disability award resulting from his accident on November 24, 1972."

The facts of this case, including the Board's letter of October 5, 1978 were once again reviewed by the Ombudsman. Having carefully considered the representations made, the Ombudsman's views remained the same and he concluded that the complaint should be supported.

The final Report of the Ombudsman pursuant to Section 22(3) was sent to the Board in March, 1979. The Ombudsman concluded that the decision of the Appeal Board dated July 29, 1977 to deny the complainant an increased Permanent Disability Award was unreasonable and recommended pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that the Appeal Board revoke its decision dated July 29, 1977 and grant the complainant an increase in his Permanent Partial Disability Award of 20% pursuant to Section 42 of The Workmen's Compensation Act. A copy of the Report was also forwarded to the Minister of Labour.

In May, 1979, we received a letter from the Board which stated that the Board did not intend to implement the recommendation contained in the Ombudsman's Report.

In its response the Board noted that the worker had complained of cervical problems and a chronic cough. In addition to these problems the Board also referred to medical reports which indicated that there had been no significant deterioration in the complainant's condition. The Board also advised the Ombudsman that the worker was not entitled to benefits pursuant to Section 42(5) because he had removed himself from the labour market. In conclusion the Appeal Board stated:

> "Accepting the findings of the Permanent Disability Consultant in his examination of (the complainant) on April 12th, 1979, noting the principal complaint of cervical disability as recorded in (the specialist's) report of July 18th, 1978, and the fact that (the complainant) has declared himself totally disabled

> and not employable, the Appeal Board panel is satisfied that the permanent partial disability award fairly recognizes and compensates (him) for his residual low back disability attributable to his November 24th, 1972 accident under the provisions of Section 42 of the Act.
>
> Consequently, the Appeal Board panel and the Board see no reason to change the decision of July 29th, 1977."

A discussion of the complainant's case was held with representatives of the Board and following that discussion, the Ombudsman was informed that the Board could find no basis to alter its position from that outlined in its response to the Section 22(3) Report. In October, 1979, a copy of the Ombudsman's Report was forwarded to the Chairman of the Board, the complainant, and his M.P.P. In February, 1980, the Ombudsman, members of his staff and representatives from the Board, met with the Minister of Labour and discussed the facts of this case. In March, 1980, the Ombudsman received notification that the Board was of the opinion that its response to the Ombudsman's recommendation was appropriate.

Accordingly, pursuant to Section 22(4) and 22(5) of The Ombudsman Act, 1975, a copy of the report and recommendation were forwarded to the Premier. The Premier's response did not indicate that any steps would be taken to implement our recommendation.

MANAGEMENT BOARD OF

CABINET

PUBLIC SERVICE GRIEVANCE

BOARD

DETAILED SUMMARY NO. 31

The complainant wrote the Ombudsman with a complaint against the Public Service Grievance Board which also involved the Ministry of Health and the Civil Service Commission.

The complainant informed us that she had been a Nurse 2 nursing instructor in the Staff Development Department of one of the Ministry of Health's mental retardation facilities. She had been given a teaching assignment for which, she felt, inadequate time for preparation had been allowed. She complained to her supervisor who treated her complaint as "a refusal to do work". The complainant was then relieved of the assignment and a reprimand for insubordination was placed in her work record.

The complainant had lodged a grievance with the Administrator of the facility. A hearing was held but the complainant's grievance was denied. The complainant then took her grievance to the Public Service Grievance Board but the Board also denied her grievance. The complainant objected to the Board's decision since she felt it was an attack on her integrity.

The Public Service Grievance Board was informed of our intent to investigate and the investigator met with appropriate officials to discuss the complaint and to obtain relevant documentation.

We learned that the complainant had received a punishment of "recorded reprimand" from her supervisor, pursuant to the Ministry of Health's Personnel Directive number F17, subparagraph k, dealing with disciplinary action for insubordination. This directive stated that "a recorded reprimand" was to be awarded for a first infraction of insubordination.

We further learned that regardless of the hearing held by the Administrator, the hearing before the Board was conducted as a hearing de novo. From the evidence obtained by our investigation, it was felt that the Board's hearing had been conducted fairly.

However, our investigation revealed that the punishment of "recorded reprimand" or indeed a "reprimand" did not exist and was not authorized in The Public Service Act or under Section 31 of the Regulations pursuant to that Act. Since the punishment was outside the jurisdiction of both the Ministry of Health and the Board, the Ombudsman formed the view that it might be open to him to conclude that the disciplinary action should be considered null and void. Furthermore, it might be open to him to conclude that having no common or understood guidelines, unofficial punishment could be both unjust and discriminatory.

Accordingly, the Ombudsman wrote the Public Service Grievance Board, the Ministry of Health and the Civil Service Commission outlining his possible conclusions and recommendations.

The Ombudsman's possible recommendation to the Public Service Grievance Board, the Ministry of Health and the Civil Service Commission was that they should expunge from their files all reference to the offence and hearings relating to insubordination by the complainant.

An additional possible recommendation to the Ministry of Health was that the Ministry should review Personnel Directive number F17 to ensure that the offences and punishments reflected therein were consistent with Section 31 of the Regulations pursuant to The Public Service Act.

Additional possible recommendations to the Civil Service Commission were as follows:

1. That the Civil Service Commission should review section 31 of the Regulations pursuant to The Public Service Act with the view to establishing and publishing in the Regulations, a comprehensive scale of punishment, including any related or collateral action;

2. The Civil Service Commission should ensure that disciplinary proceedings, in the Ministries, were conducted in accordance with section 31 of the Regulations.

Representations were received from the Public Service Grievance Board in writing. The Board felt that the "reprimand" was so inherent in administrative practice and so well established that there was no need of embalming it in statutory rules. The Board was also of the opinion that it had not exceeded its jurisdiction in the matter.

Representations were received from the Ministry of Health and the Civil Service Commission at a hearing held in our Office. Representatives from the Ministry and the Commission denied that a reprimand was a punishment, denied that punishment formed a part of industrial relations, stated that Directive number F17 was a legal nullity, denied that there was any file at the facility indicating that the complainant had been reprimanded and asked that the Ombudsman make a recommendation that no letters of reference should be issued by personnel officers in response to requests, as required by Section 10 of The Public Service Act. Section 10 requires every civil servant to take an oath of secrecy.

After careful consideration of the representations made, the Ombudsman concluded that the complainant had indeed received a punishment of "recorded reprimand" from her superior under the Ministry of Health's Personnel Directive number F17, subparagraph k. The Ombudsman was of the opinion that a punishment of "recorded reprimand" or indeed "reprimand" did not exist and was not authorized in The Public Service Act or under Section 31 of the Regulations issued pursuant to the Act. Since a "recorded reprimand" was considered and used in the complainant's case as a punishment under Personnel Directive number F17 and since it was equally clear that it was not on the list of authorized punishment under Section 31 of the Regulations, the Ombudsman concluded that the actions of the Ministry were not in accordance with The Public Service Act.

The Ombudsman was also of the opinion that the Board erred in upholding the punishment given to the complainant within the Ministry of Health since the punishment was outside the jurisdiction of the Ministry. Furthermore, the Ombudsman concluded that the procedure for giving

references by personnel staff in response to inquiries from prospective employers either was not clear or was not understood. Evidence from the complainant's personnel file which was still held at the facility, indicated that references were being given to prospective employers in spite of the provisions of Section 10 of The Public Service Act.

Consequently, the Ombudsman wrote to the Ministry of Health, the Public Service Grievance Board and the Civil Service Commission, and pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 recommended the following:

1. That the Public Service Grievance Board, the Civil Service Commission and the Ministry of Health should expunge from their files all references to the offence and hearings relating to insubordination by the complainant;

2. That in consultation with the Civil Service Commission, the Ministry of Health should review Personnel Directive number F17 to ensure that it reflected only such punishments that were consistent with section 31 of the Regulations pursuant to The Public Service Act; and

3. That the Civil Service Commission should review the principles upon which personnel officers or other officials give references to prospective employers and make Ministries aware of these principles.

Since the mental retardation facility in this case had been transferred to the jurisdiction of the Ministry of Community and Social Services, the Ombudsman also wrote to that Ministry with his recommendations.

Responses were received from the two Ministries, the Board and the Commission.

The Public Service Grievance Board did not agree that there had been an error in law in its assuming jurisdiction. The Board also advised that it had no authority to remove any documents from any file relating to a specific hearing since such records were required under Section 48(c) of the Regulations of The Public Service Act.

The Ministry of Health indicated that it did not agree that the Ministry was not entitled to use warnings of written reprimands.

The Ministry of Community and Social Services' responses were similar to those of the Ministry of Health. In addition the Ministry of Community and Social Services pointed out that since the Board was required to maintain records regarding hearings, it saw no merit in the Ombudsman's suggestion that the Ministry of Community and Social Services expunge its files as the information was readily available elsewhere.

The Civil Service Commission advised that the Commission was reviewing the principles upon which personnel officers or other officials gave references to prospective employers. The Commission later advised us that it would be incorporating in its manual advice regarding the giving and receiving of references. (However, as of the day of the writing of this summary, the Commission has not done so.)

After reviewing these responses the Ombudsman was of the opinion that the governmental organizations' positions consisted of legal points for which valid arguments could be made. Thus, he decided not to proceed to report to the Premier.

MINISTRY OF

NATURAL RESOURCES

DETAILED SUMMARY NO. 32

The complainant visited our Office complaining of a decision rendered by the Ministry of Natural Resources.

The complainant contended that in 1970 he sold a parcel of land to a third party. Prior to the sale, the complainant was informed by the then District Forester of the Department of Lands and Forests, that he had a right of way over a road crossing the property. The District Forester advised the complainant in an April, 1967 letter "that it would appear that this is public thoroughfare and not a private road".

After the sale of this land the purchaser barricaded the road, claiming it was private, and as a result of this action, the complainant did not have road access to other lands owned by him. Since the complainant believed that the road was public, in view of the information which he had received from the then District Forester, he requested confirmation of this point from representatives of the Ministry. His problem was not resolved to his satisfaction.

The Ministry was informed of our intention to investigate. After receiving a statement of the Ministry's position, pertinent information was also received from the complainant, Ministry officials and from examination of the Ministry's files. Legal research by the Ombudsman's staff indicated that the road in question was not public.

As a result of his investigation, the former Ombudsman came to the possible conclusions that the Ministry of Natural Resources was "wrong" in advising the complainant as it did in the April, 1967 letter from the then District Forester that the road was a public thoroughfare and not a private road, and that the Ministry acted "unreasonably" or "unjustly" in refusing to take the necessary steps to solve the complainant's problem. Accordingly, the former Ombudsman made a possible recommendation that access be provided to the complainant's property, either across the purchaser's property on the existing path or in some other fashion that the Ministry considered appropriate, and that the cost of providing such access be borne by the Ministry.

Since the former Ombudsman felt that the Ministry of Natural Resources and the former District Forester might be "adversely affected" by his possible conclusions and recommendation, he accorded to the Ministry and the former District Forester the opportunity to make representations respecting the possible adverse report, pursuant to Section 19(3) of The Ombudsman Act, 1975. Representations were received from the Deputy Minister, who also replied on the former District Forester's behalf by letters dated December 30, 1977 and April 13, 1978. In short, the Ministry raised certain points of contention which were considered by the former Ombudsman.

After a careful review of all the available information, including the latest points raised by the Ministry, the former Ombudsman determined, pursuant to Section 22(1) of The Ombudsman Act, 1975, that it was "wrong"

for the Ministry of Natural Resources to advise the complainant as it did in the April, 1967 letter. Furthermore, it was "unreasonable" for the Ministry to refuse to take the necessary steps to resolve the complainant's problem. Accordingly, in August, 1978, the former Ombudsman recommended, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry provide the complainant with access to his property equivalent to that which he had while using the road over the property that had been sold. The cost of the year round access was to be borne by the Ministry.

In September and October, 1978, the Ministry wrote to the former Ombudsman accepting the substance of his recommendation. Since the complainant had constructed a new access road, the Ministry was willing to reimburse him for his costs provided he could substantiate them with invoices. The complainant eventually wrote to the Ministry, estimating his expenses in constructing the road at $1,260.00. However, he could only substantiate $850.00 of his claim.

The Ministry was willing to pay the latter amount provided the complainant signed a release form. However, in December, 1979, our investigator was advised that the complainant would not sign the release form because "it only involved a settlement of $850.00". The complainant would have considered signing the form if the Ministry was willing to pay the total claim of $1,260.00.

The present Ombudsman then wrote to the complainant explaining that The Ombudsman Act, 1975 does not permit him to negotiate a settlement on behalf of a complainant. He pointed out that since the Ministry had accepted the recommendation and had acted in a responsible manner in attempting to implement it, he was of the view that, under the circumstances, it would be inappropriate for him to continue his involvement in the matter. Accordingly, the file was closed. The Ombudsman also notified the Deputy Minister of his actions.

We were later notified that the complainant had accepted the $850.00 and signed a release form.

DETAILED SUMMARY NO. 33

This Office received a number of complaints by way of letters in the fall of 1975, in the summer and fall of 1976, in the spring of 1977, and at private hearings conducted in the summer and fall of 1976 in Arnprior and Goderich, respectively. These complaints were all directed against the Ministry of Natural Resources and its implementation of a policy connected with The Provincial Parks Act of 1954.

The complainants were leaseholders of land in two provincial parks and had built cottages there on land leased from the government. They had signed 21 year leases and could renew their leases when they expired. Some of the lands in question had been leased by the same family for generations. However, with the introduction in 1954 of The Provincial Parks Act, which was "to provide for the restoration of established Provincial Parks as near as possible to their natural state for the benefit, enjoyment, and advantage of

the people of Ontario", the Ministry also introduced a policy of phasing out leaseholds and cottages on leasehold land. Briefly, the Ministry policy was that all leases currently in effect would run their normal 21 year term and the leaseholders would be able to renew their leases for another 21 year term as stipulated in their leases, but no more. In other words, the "right to renewal" clause was to be deleted from all leases renewed after 1954. As well, no new leases were to be issued.

When the leases expired the leaseholders' cottages would either be sold on the open market (presumably for their materials) or the government would compensate the leaseholders for their loss. The cottages would then be moved or dismantled. Eventually, it was thought, all leaseholders would be gone and the parks would then be true wilderness parks.

At the outset of our investigation this Office informed the complainants that, pursuant to Section 14(b) of The Ombudsman Act, 1975, the Ombudsman was not empowered to investigate the policy decision to remodel the provincial parks as natural wilderness parks because that policy was made by the Ontario Cabinet. The investigation, therefore, would be confined to the Ministry of Natural Resources' implementation of the cottage phase-out policy.

The complainants contended that a substantial number of leaseholders had never been officially informed of the new phase-out policy and that a number of other leaseholders were not informed until their old leases were about to expire in the early 1960's. They further contended that the provision of renewal clauses in the new leases had not been consistent for all leaseholders. They also contended that the Ministry's program of acquisition of leaseholders' cottages and improvements had been very haphazard. They contended that the Ministry's acquisition program had led to the isolation of cottages and to "an attrition of the community ethos". In addition, the leaseholders contended that Ministry representatives had not adequately cleaned up the debris on the lots where cottages had been removed or dismantled. Their final contentions were that they were not allowed representation on the Advisory Committee (which had been initiated in 1974 to develop policy recommendations for master plans for the provincial parks), that their briefs had not been given adequate consideration, that certain recommendations made by their committees had not been accepted by the Minister and that the Advisory Committee was too limited in scope.

During the course of this investigation, the pertinent files of the Ministry of Natural Resources were studied. Files from the Ministry of Government Services' Realty Services Branch were also studied. Members of our investigative staff conducted interviews with senior officials of both Ministries, former and current park personnel (at both parks), representatives of the Advisory Committee, and various leaseholders from both parks. Members of our investigative staff also visited the parks in order to gain a clearer understanding of the complaint.

Our investigation disclosed that no registered letters announcing the policy changes were ever sent to the leaseholders at one of the parks. In fact, the government did not decide that the policy would apply to one park until 1957. However, registered letters had been sent to leaseholders at the other park. As well, none of the leaseholders who acquired their leases through transfer were routinely advised of the cottage phase-out policy.

Although our investigation revealed that the Ministry's cottage rental and removal policy was not substantially unfair or unreasonable, it was apparent from the staff visits to the parks that the "community nature" of the parks had suffered from that policy. Our investigation also disclosed that the park superintendents had been remiss in their duty to enforce the conditions of sale (whereby the purchaser of a cottage, following dismantlement or removal, was responsible for cleaning up the debris and leaving a safe and clean lot).

Our investigation also discovered that the Ministry policy of acquiring leaseholders' interests had indeed been a haphazard one. Prior to 1973 there was no record of any public announcement that the government was interested in purchasing, apparently because the purchase policy was not a forced acquisition program, but was instead a result of the leaseholders having expressed their desire to sell.

We could find no evidence to support the complainants' contentions that the Advisory Committee had acted in an improper fashion in any way.

Because certain evidence obtained in this investigation might enable the Ombudsman to make a report supporting some of the complainants' contentions, and because the Ministry of Natural Resources might be adversely affected by this report and recommendation, the Ombudsman afforded the Ministry an opportunity to make representations. Accordingly, a meeting with Ministry officials was arranged for this purpose.

At this meeting the Ministry proposed an "option policy" whereby the leaseholders would be given the choice of retaining their leasehold interests until 1996 at market value land rental fees, or of continuing in accordance with the terms of their current leases. Cabinet approved this policy in August, 1978 and stipulated the following: That the "option policy" would apply to those persons who were leaseholders as of October 16, 1978; that a review panel within the Ministry would consider exceptional cases; and that full market value rental fees would be charged as soon as a leaseholder decided that he or she wished to remain beyond the lease termination date until 1996.

It was the view of the Ombudsman that the "option policy" was developed to alleviate substantially the problems which the leaseholders had originally brought to his attention and that their position was thereby improved to a large degree. Accordingly, our Office closed its files on this matter and so notified the complainants.

MINISTRY OF REVENUE

DETAILED SUMMARY NO. 34

The complainant wrote to our Office in April, 1977 complaining of an Ontario Home Buyers Grant decision rendered by the Ministry of Revenue.

The complainant stated that he was denied the initial supplementary grant of $250.00 because he did not complete the original application form for the grant. The complainant had purchased a condominium unit with another person. The co-owner applied for a grant and they received $1,000.00. Later, the co-owner sold his portion of the property and vacated the premises. In view of the fact that the co-owner had submitted the application for the grant and had sold his share of the unit within one year of purchase, the Ministry had ruled that the complainant was ineligible for the first supplementary grant of $250.00. The complainant felt that The Ontario Home Buyers Grant Act, 1975 and its Regulations were unfair. The complainant believed that the purpose of the Ontario Home Buyers Grant Programme was to assist people purchasing their first home, and to continue to offer them aid on condition that they retained ownership and remained in their housing unit. Accordingly, the complainant contended that it was unreasonable to deny him the supplementary grant monies because the co-owner had sold his share of the unit. The complainant continued to own his share of the property and to reside in the housing unit for over one year.

The Ombudsman notified the Ministry of Revenue of his intention to investigate this complaint and a statement of the Ministry's position was received. The investigator obtained evidence that the complainant and the grant applicant were the original co-owners of the condominium unit, which was located in a city in southeastern Ontario. They executed the Agreement of Purchase and Sale in July, 1975 and resided in the unit as of October 1, 1975. Upon receipt of the initial $1,000.00 grant in January, 1976, the applicant divided the proceeds with the complainant. In September, 1976, the applicant married, and conveyed his interest in the unit to a third party. Subsequently, the complainant applied for the first supplementary grant which was denied.

The complainant pointed out that he had no control over his co-owner's (i.e., the applicant's) actions and that the original application form did not even require his signature. His position was that had he been the one to forward the application form to the Ministry, he would have received the first supplementary grant. (The complainant realized that he was not entitled to the second supplementary grant of $250.00 because he and the third party sold the housing unit prior to the second qualification date.)

The Ombudsman noted that Ontario Regulation 67/77 amending Ontario Regulation 229/76 made under The Ontario Home Buyers Grant Act, 1975 permitted a supplementary grant in the case of separated spouses. He was also aware that the Ministry had considered the position of unmarried co-owners of a housing unit and their entitlement to supplementary grants where one co-owner had ceased to reside in the unit as his principal residence; the Ministry felt that this situation did not warrant special treatment by Regulation.

On the basis of the investigation conducted, the Ombudsman came to the possible conclusion that the Ministry's decision to deny the supplementary grant to the complainant was "unreasonable" as set out in Section 22(1)(b) of The Ombudsman Act, 1975. In signing the application form for the grant, the original applicant appeared to have acted as agent for the complainant, whose name also appeared on the application form as co-owner. The applicant paid one-half of the initial grant to the complainant. Title to the condominium unit was transferred to the applicant and the complainant. Accordingly, it appeared open to the Ombudsman to conclude that the complainant qualified for the first supplementary grant in accordance with Sections 4 and 5(1) of The Ontario Home Buyers Grant Act, 1975. The Ombudsman made a possible recommendation that a payment of $250.00 be made to the complainant under that Act.

Since the Ombudsman felt that the Ministry might be "adversely affected" by his possible conclusion and recommendation, he accorded to the Ministry the opportunity to make representations respecting the possible adverse report, pursuant to Section 19(3) of The Ombudsman Act, 1975. The Deputy Minister wrote to the Ombudsman in April, 1979, stating that the person who, in the Ministry's view, received a grant under Section 3 was the person to whom it was paid by the Ministry, that is, the applicant. The application form for a grant did not disclose that the applicant had applied for or accepted a grant on behalf of any other person, nor did it show any other relationship between the applicant and the complainant other than that of unrelated co-owners of a housing unit. It was the Ministry's position that the complainant's receipt of part of the initial grant in a subsequent distribution by the applicant was not a recognition of his eligibility by the Ministry, but a private arrangement between himself and the applicant. Accordingly, the Ministry concluded it could not accept the Ombudsman's possible conclusion and recommendation.

Subsequently, after a careful review of the Ministry's latest position, the Ombudsman determined, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Ministry to rely on the application form, as it did in its April, 1979 letter, to deny the complainant the $250.00 grant. The Ombudsman determined that the application form ought to have been set up in such a manner that it could be signed by all purchasers of a housing unit. He pointed out that the potential problem concerning to whom the Ministry should send the grant cheque upon determination of the eligibility of applicants could have been alleviated by posing the question on the application form. As a result, the Ombudsman recommended pursuant to Sections 22(3)(c) and (g) of The Ombudsman Act, 1975 that the Ministry pay to the complainant the first supplementary grant or an amount equivalent thereto.

In September, 1979, the Deputy Minister informed the Ombudsman that his Ministry had accepted the Ombudsman's recommendation and stated that a cheque for $250.00 would be issued to the complainant.

DETAILED SUMMARY NO. 35

A solicitor from Ottawa, Ontario wrote to the Office of the Ombudsman in early 1978 complaining, on behalf of his client, of a decision rendered by the Ministry of Revenue.

The client/complainant had been asked to return an Ontario Home Buyers Grant in the amount of $1,500.00 because upon audit, the Ministry learned that he had owned a home in a city outside Canada prior to April 8, 1975. As a result, he was disqualified from receiving the grant in accordance with Section 2(2)(a) of The Ontario Home Buyers Grant Act, 1975.

The Ombudsman informed the Ministry of Revenue of his intention to investigate this complaint.

Our investigation indicated that in 1969 the complainant built a one-room shack in a city outside Canada at a cost of approximately $300.00 (in Canadian currency). Although he lived in the unit at the time, he did not own the land upon which the unit was located, but rather leased the land for $15.00 per three months. In 1976, the complainant sold the shack, which was subsequently relocated.

According to the complainant, the shack did not have kitchen or washroom facilities. He used the facilities of the owner of the land, whose home was located on the same property. The complainant stated, and our investigation confirmed from information received from a third party, that the shack was not a common type of housing in that city.

The complainant arrived in Canada in October, 1972 and rented accommodation until September, 1975, at which time he and his wife purchased a condominium unit. The complainant then applied for the Ontario Home Buyers Grant.

On the basis of the investigation, the Ombudsman came to the possible conclusion that the Ministry was "unreasonable" in taking the position that Section 2(2)(a) of The Ontario Home Buyers Grant Act, 1975, precluded the complainant from qualifying for a grant. The Ombudsman came to this possible conclusion as it appeared that the Ministry was "unreasonable" in taking the position that the complainant's shack came within the definition of a housing unit as set out in Section 1(a) of the Act.

The Ombudsman pointed out that he was aware that the history of the passage of The Ontario Home Buyers Grant Act, 1975 demonstrated that the Legislature intended to deny grants to applicants who had previously owned and resided in housing units, either in or outside Ontario. However, the Ombudsman felt that in determining the eligibility of any individual for a grant, the precise words of the legislation ought to be applied to the facts.

With the above in mind, the Ombudsman made a possible recommendation that the Ministry cancel its decision to recover from the complainant the $1,500.00 Ontario Home Buyers Grant.

Since the Ombudsman felt that the Ministry might be "adversely affected" by his possible conclusion and recommendation, he accorded to the Ministry the opportunity to make representations respecting the possible adverse report pursuant to Section 19(3) of The Ombudsman Act, 1975. Subsequently, the Deputy Minister of Revenue requested additional information, which was provided. In December, 1979, the Deputy Minister advised the Ombudsman that he was prepared to accept the Ombudsman's possible conclusion and to treat the complainant as eligible for the Ontario Home Buyers Grant. Accordingly, the complainant and his solicitor were advised by the Ombudsman that the Ministry had agreed to give effect to his possible recommendation. The file was then closed.

DETAILED SUMMARY NO. 36

The complainant wrote the Ombudsman with a complaint concerning a decision of the Ministry of Revenue to deny him an Ontario Home Buyers Grant.

He informed us that on November 19, 1975, he applied to the Ministry of Revenue for an Ontario Home Buyers Grant for his mobile home. His application was denied by the Ministry because his mobile home did not meet the Canadian Standards Association Z240 standard. However, the complainant contended that prior to purchasing his mobile home, the owner and operator of the mobile park on which the home stood had made inquiries on his behalf with the Ministry and had been informed that he (the complainant) was eligible for a grant. As a result of this information, the complainant purchased his mobile home.

The Ministry was informed of our intention to investigate this complaint and our investigator met with an official of the Ministry of Revenue to discuss the complaint and to obtain relevant documentation.

Evidence obtained under oath from the owner and operator of the mobile park indicated that he had made inquiries on behalf of the complainant to an official of the Ministry on three occasions. The first was to obtain general information concerning the Home Buyers Grant program.

After receiving a copy of Appendix B of the 1975 Ontario Budget under which paragraph 3 advised that a housing unit included "a mobile home that meets prescribed standards defined by the Canadian Standards Association", the park owner contacted the Ministry official again. At that time, the official advised that he was not sure which C.S.A. standards would be accepted and suggested that the Canadian Standards Association be contacted. The park owner did so and was provided with the various parts of the C.S.A. Z240 standard and the years in which they became mandatory.

Upon receipt of this information he again contacted the Ministry official. This time he was advised by the official, that provided the complainant's mobile home had a C.S.A. sticker, the Ministry would accept it. Inasmuch as the complainant's mobile home had the C.S.A. sticker for electrical parts, the park owner believed that the complainant would qualify for a grant. He passed this information on to the complainant. The complainant then purchased his mobile home.

Our Office was unable to locate the Ministry telephone guide who spoke to the park owner but we were able to obtain general information concerning telephone guides employed by the Ministry.

We learned that guides were advised to refer all questions which they were unable to answer to group leaders. They were further advised not to confirm eligibility on the telephone but to advise the caller that while he seemed eligible to apply, based on information supplied, he should for his own protection write to the correspondence section for written confirmation. All guides received circulars containing information on programs administered by the Branch, which were retained at their stations for easy reference. More complex inquiries were to be referred to supervisors, the Ontario Home Buyers Grant Section or the Legal Services Branch. Formal information manuals were available shortly after the programs commenced.

Based on the evidence taken under oath from the park owner, and the information provided by the Ministry, it appeared that the Ministry official had not followed the appropriate procedures with respect to the confirmation of our complainant's eligibility. Instead of referring the park owner to CSA the official should have referred him to a supervisor, the Ontario Home Buyers Grant Section or the Legal Services Branch. The official should have also advised him to write to the correspondence section for confirmation of eligibility.

We felt that the complainant was entitled to rely on the accuracy of the information given by the Ministry official to the park owner on the strength of which he believed that he would qualify for a grant. Accordingly, the Temporary Ombudsman came to the possible conclusion that the Minister's decision to deny the grant to the complainant was "unreasonable" as set out in Section 22(1)(b) of The Ombudsman Act, 1975, and that it might be open to him to recommend, pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the complainant be paid a sum in lieu of an Ontario Home Buyers Grant.

Since the Temporary Ombudsman felt that the Ministry might be "adversely affected" by his possible conclusion and recommendation, he accorded to the Ministry the opportunity to make representations respecting the possible adverse report, pursuant to section 19(3) of The Ombudsman Act, 1975.

Representations were received on behalf of the Ministry. The Ministry could not agree that it had acted unreasonably in not granting the complainant a sum in lieu of an Ontario Home Buyers Grant.

The Ministry stated that its records had disclosed only one telephone conversation between the official and the park owner. Since the dates of other conversations which the park owner stated he had with the Ministry official had not been given, the Ministry felt that there was no evidence that would indicate that an official of the Ministry had misinformed the park owner, or that the latter had relayed the results of his conversation accurately to the complainant. It was the Ministry's view that it would be inconsistent that the official should have recorded one telephone conversation and failed to record others.

The Ministry further stated that the fact that some difficulties were apparent on the face of the complainant's application form suggested that if the same information had been given to the Ministry at an earlier date the status of the complainant's eligibility would have been determined prior to purchase. The Ministry was of the view that such an inquiry might have resulted in the complainant not purchasing from the mobile home operator a mobile home which he was anxious to sell.

Since our investigation revealed that the owner and operator was not the vendor of the mobile home in question, there was no evidence to indicate that he was anxious to sell the mobile home or that he would have served his own interest by giving incorrect information regarding the mobile home to the Ministry, or by relaying incorrect information to the complainant.

Our investigation also indicated that while the park owner and operator was not able to give exact dates of his telephone conversations, it would have been consistent with his role of assisting the complainant with his application for him to have made these calls to confirm the complainant's eligibility.

The Ombudsman concluded, therefore, that the complainant relied on the information from the owner and the operator of the mobile park, which information had been received from the Ministry official, and since this information was incorrect, that the Ministry was "unreasonable", within the meaning of Section 22(b) of The Ombudsman Act, 1975 in refusing to grant to the complainant a sum of $1,000.00 in lieu of the Ontario Home Buyers Grant.

Consequently, the Ombudsman wrote to the Ministry recommending, pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, that the complainant be paid a sum of $1,000.00 in lieu of the Home Buyers Grant.

A reply was received from the Ministry indicating it would not be implementing the Ombudsman's recommendation. The Ministry's position remained that the complainant was not entitled to the grant.

Pursuant to Section 22(4) and 22(5) of The Ombudsman Act, 1975, a copy of our report and recommendation was forwarded to the Premier. His response did not state that any steps would be taken to implement our recommendations. The complainant was then notified that his complaint would be included in our next report to the Legislature for the consideration of the Assembly.

MINISTRY OF

THE SOLICITOR GENERAL

ONTARIO POLICE COMMISSION

DETAILED SUMMARY NO. 37

This complainant contacted the Ombudsman by way of a letter dated March 19, 1977, objecting to the use of public funds to show the film "How to Say No to a Rapist and Survive". She advised that the film purported to be a frank and effective discussion of how a woman can avoid or escape sexual assault when threatened. However, many experts considered the film to be objectionable in both content and presentation. She contended that there was evidence to show that the advice contained in this film was not particularly helpful and, in fact, following its advice might result in sexual assault being impossible to prove in a Canadian court of law.

The complainant had made the complaint to the Ontario Police Commission, asking that it direct local police forces and boards of police commissioners to cease using the film in their crime prevention and public education programmes. Since this complaint was still before the Commission our file was held in abeyance.

On January 27, 1978, the Commission informed the complainant that it did not have the authority to direct the release or suppression of any film that a local police force or board wished to use. The complainant then asked our office to proceed with an investigation of this decision.

On June 26, 1978, the Ombudsman wrote to Judge T.J. Graham, Chairman of the Ontario Police Commission, pursuant to section 19(1) of The Ombudsman Act, 1975, advising him of our intent to investigate this complaint.

The Commission responded in a letter dated July 25, 1978, reiterating its opinion that it did not have the power to make an order like the one the complainant had requested. Further, the Commission stated that there seemed to be substantial disagreement among experts as to the value of the film.

The question of the Commission's powers in this case was first examined. It was found that although The Police Act did not vest the Commission with the authority to suppress the film, it established the Commission's mandate to provide information and advice regarding techniques in handling special problems, and to assist in co-ordinating the work and efforts of police forces in Ontario.

Our investigation also determined that the Provincial Secretariat for Justice had established an ad hoc committee to study material on sexual assault, including the film in question, so as to make recommendations with regard to the value of this material for crime prevention and community education programmes. On November 20, 1978, our investigator contacted a representative of the Provincial Secretariat for Justice and was informed that the work of the ad hoc committee was nearing completion.

During the course of the investigation it appeared to the Ombudsman that there might be sufficient grounds for him to form the opinion that, although the Commission could not direct local boards and police forces not to use this film, the Commission did have the power to review the film and

make recommendations with regard to its suitability for use by local boards and police forces. It was therefore possible that the failure of the Commission to do so in this case was "unreasonable" and that the Ombudsman might therefore recommend that the Commission carry out such a review and express an opinion to the police forces and boards concerning its use as a tool for crime prevention and community education programmes.

In accordance with Section 19(3) of The Ombudsman Act, 1975 a letter was sent to the Commission to advise it of this possible conclusion and recommendation, giving it the opportunity to make representations to the Ombudsman.

The Commission made representations in response to the possible conclusion and recommendation in a letter dated March 20, 1979. In that letter, it was indicated that the Commission had discussed the matter with the municipal police force which had initially been involved in the matter and had determined that the film was being used only occasionally, when specifically requested by an interested group; the police force wished to continue to exercise its prerogative to use the film in this manner.

It was also stated that a member of the Commission's staff had sat as the Commission representative on the ad hoc committee reviewing educational materials about sexual assault and that the committee had classified the film as "not recommended".

After considering the representations of the Commission, the Ombudsman issued his final report on April 24, 1979, supporting the complaint and making the following recommendations:

> "It is my recommendation pursuant to Section 22(3)(b) of The Ombudsman Act that it is the responsibility of the Commission to now review the film and to express an opinion to police forces and boards concerning its use as a tool for crime prevention and community education programmes or to express an opinion that its use is at the discretion of local police forces and boards."

The Commission responded to this Report in writing on June 8, 1979, reiterating that a Commission representative had attended a screening of the film for an inter-Ministry committee in October of 1977, and that another staff member had been a member of the aforementioned ad hoc review committee in the fall of 1978. Based on assessments by these staff members the Commission had concluded that the subject was too controversial to justify the giving of specific advice to police forces that the film should not be shown.

The Commission had nevertheless offered advice to the particular municipal police force but the local board of police commissioners had already reached its own conclusion and was not prepared to alter its position.

After considering this response, the Ombudsman determined that since the Ontario Police Commission does not have the jurisdiction to require a local police force or board of police commissioners to implement its recommendations, the Ontario Police Commission's action was, in this case, adequate and appropriate.

The file was closed and the Commission was informed of this decision in a letter dated September 14, 1979.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 38

This complainant alleged that the Ministry of Transportation and Communications purchased approximately 13½ acres from him for its requirements in constructing Highway 140. As a result, the complainant's remaining property was divided into four parcels. Two of the parcels became landlocked as a result of the closing of a side road when the new highway was completed.

The complainant further contended that during the course of his discussion with the Ministry's property agent concerning the sale of the 13½ acres, he was orally informed that he would be given access to the landlocked properties. Subsequently, the Ministry advised him that he would not be granted access to these properties because Highway 140 was designated as a limited access highway.

Finally, the complainant contended that it was unreasonable for the Ministry to refuse him access to the properties.

The Ombudsman notified the Ministry of his intention to investigate this complaint.

Our investigation included contact with the complainant for additional information. Information was also obtained from various Ministry officials. In addition, the investigator received information from an independent land appraiser.

In response to our notice of intention to investigate this matter, the Ministry replied that the complainant and his wife had entered into an agreement on February 5, 1970 for the sale of the 13½ acres in the amount of $24,800.00. We were also informed that this amount included the sum of $4,350.00 in respect of depreciation in value of 5.8 acres of the complainant's property which would be affected by the construction. The Ministry also informed us that it was agreeable to purchasing the 5.8 acres if the complainant so desired, at the 1970 value, less the amount of depreciation that had already been paid ($4,350.00) plus interest at 6% since 1970.

During the course of our investigation, it became apparent that the 5.8 acres for which the Ministry had paid $4,350.00 in respect of depreciation, represented two of the parcels that had become landlocked as a result of the construction of the highway, and that the Ministry had failed to consider the third landlocked parcel of approximately 14 acres which had also been affected by the Ministry's acquisition.

As a result of our Office's intervention, Ministry officials reinvestigated the matter and agreed that the 14 acre parcel had been landlocked and had been omitted from consideration at the time of the original transaction in February, 1970. As a result, further negotiations were entered into between the Ministry and the complainant, resulting in the complainant accepting a further sum of $16,820.70 as a final settlement of the matter on January 20, 1980.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated the investigation.

DETAILED SUMMARY NO. 39

In this case the complainant contacted the Ombudsman at the public hearings held in Parry Sound on January 19, 1977 with a complaint against the Ministry of Transportation and Communications. The complaint related to a Local Roads Board.

The complainant contended that his cottage property was included within the boundaries of the Local Roads Board and he was required to pay taxes, but he received no benefit from the roads included in the Local Roads Board area. The Ombudsman notified the Ministry of his intention to investigate this complaint.

The Deputy Minister responded to the complaint by stating that he understood that the complainant used 1.1. miles of the area road to gain access to his cottage and thereby derived benefit from the maintained road system. He went on to say that when the Board was formed, within its boundaries there was justification for including the complainant's property.

Our investigation included discussions with the complainant and other property owners in the Local Roads Board area together with a review of the Ministry's file and interviews with several Ministry officials.

From our investigation the Ombudsman concluded that all the actions of the Ministry officials were in full compliance with The Local Roads Board Act. Notwithstanding the lawful and proper conduct of Ministry officials, however, it was the Ombudsman's opinion that the provisions of the Act itself, in accordance with which all decision had been made and action taken, had worked an unjust result in this case.

The Ombudsman therefore formed the opinion pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that, the acts and decision complained of in this case were made in accordance with "a provision of (an) Act . . . that is or may be unreasonable, unjust, oppressive or improperly discriminatory".

The Ombudsman noted that it was important to recognize that once the Board was formed the Minister had no statutory authority to alter the boundary of the local roads area on his own motion: he could make such alterations only if he was petitioned to do so. The Minister, pursuant to Section 16(4) of the Act could alter the Board's area "in accordance with the proposal approved at the meeting or in such other manner as he considered appropriate" - but he could make such alterations only "where a majority of the owners present at the meeting vote in favour of the proposal". In view of these restrictions on the Minister's ability to alter the boundaries, it was all the more important that any person who might be included in the area be fully informed of the proposed creation of the Local Roads Board prior to the formal creation by the Minister under Section 8(1) of the Act.

The Ombudsman also noted that Section 7(2) of The Local Roads Board Act requires the "posting up in at least six conspicuous places . . ." of notices of the initial information meeting and that Section 7(3) requires that this meeting be held ten days after the posting of the last notice.

In this case, although there was full compliance with the notice requirements set out in the Act, several residents were not actually informed of the formation meeting.

The notices were posted in mid-August and the formation meeting held on Labour Day. Presumably The Local Roads Board Act requires notice so that potentially affected property owners will have a chance to voice their opinion at the formation meeting, before a petition for creation is forwarded to the Minister. The persons who wish to be excluded from the area may fail to carry the day at the formation meeting (the Act requires a yes vote from only a majority of owners of land in the proposed area) but it is clear that even the elementary right to voice disagreement and perhaps persuade the other owners present, is abrogated in the absence of effective notice.

Since this meeting was held on Labour Day, when all owners could not necessarily be expected to be in the area, and since the notices were placed only within the proposed area, while the access routes of owners with water access only were not contiguous, or even proximate, to the proposed area, the Ombudsman found that these cottagers, including the complainant, may not have had "reasonable" notice of the formation meeting.

The Ombudsman therefore recommended pursuant to Section 22(3)(e) of The Ombudsman Act, 1975 that Section 7(2) of The Local Roads Board Act be reconsidered with a view to amending it to require notice of the formation meeting to be given by a registered letter to each land owner in the proposed area.

In addition, the Ombudsman recommended that consideration be given to amending the Act to enable the Minister after formation and on his own motion to establish a smaller area than that originally established, should he consider it in the public interest to do so.

The Minister accepted the Ombudsman's recommendations and subsequently the Legislature amended the Act to provide the Minister with the power to alter the boundaries of the Local Roads Board if he considers it in the public interest to do so. The Minister also stated that he would revise Ministry policy to ensure that all affected area land owners are notified by mail upon the proposed formation of a Local Roads Board rather than by the posting of notices as the policy had previously required.

The Ombudsman informed the complainant of the amendments and explained that it was now open to him to apply to have his property removed from the Local Roads Board by way of a proposal of the Minister.

APPENDICES

APPENDIX A

RECOMMENDATIONS DENIED

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES			
2	60	That the Ministry pay the complainant the sum of $1,318 for his losses and legal expenses.	3, Recommendation 34	That The Audit Act and The Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of The Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Conslidated Revenue Fund. Further that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Select Committee.	Recommended amendments have yet to be enacted. The Ministry is willing to comply with the Ombudsman's recommendation if the payment can be lawfully made.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH			
4	45	That the Ministry consider what changes should be made to The Public Hospitals Act, Sec. 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 to 50 of that Act, which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as The Ontario Council of Health.	5, Recommendation 27 6, Recommendation 1	That the Ministry implement as soon as possible the recommendation of the Ombudsman. That the Ministry consider what changes should be made to The Public Hospitals Act and in Sec. 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	The Minister has instituted enquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH			
6	21	(2 complaints) that the regulations made pursuant to The Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analagous service listed in the O.M.A. fee schedule.	7	The Committee supported the substance of the Ombudsman's recommendation and recommended to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to The Health Insurance Act providing that "where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the regulations, it is the function of the General Manager and he has the power to determine the amount".	Recommended amendment has yet to be enacted.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
2	132	Recommended that the Board either request jurisdictional determination from the courts or request that The Workmen's Compensation Act be amended to give the Board the power to both collect and offset overpayments.	3, Recommendation 31	Amend The Workmen's Compensation Act to provide for statutory authority to recover or write-off overpayments.	Recommended amendment has yet to be enacted.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
3	75	That the Appeal Board vary its decision and pay compensation benefits to the complainant; that the Appeal Board reassess the complainant for a Permanent Disability Award.		Subsequent to the tabling of the Ombudsman's Third Report, the Board by an Appeal Board interim decision appointed a medical Referee pursuant to Sec. 22(1) of The Workmen's Compensation Act for the purposes of reporting to the Board on the diagnosis of the workman's complaint. The Committee was advised by representatives of the Ombudsman's Office that they welcomed this action of the Board and that they recommended the Committee defer any further consideration of this complaint pending the report of the medical referee and subsequent actions of the Board, if any. The Committee accordingly agreed to defer any further consideration pending these events.	A new hearing was convened on this matter and adjourned pending the determination of the jurisdiction of the Appeal Board panel. The problem having been resolved, the adjourned hearing was reconvened. The medical referee's report received by the Board in August, 1978 was considered by it to be inconclusive. Accordingly, the Board directed a new hearing be held pursuant to Section 75 of The Workmen's Compensation Act to determine the claimant's entitlements to benefits. After reviewing the medical and other related history on the Board's file the Appeal Board Panel stated that: "The Appeal Board is unable to conclude that (the complainant's)low back disability manifest from October, 1959 was causally related to the incident in employment on May 27, 1959."
			5, Recomendation 15	However, the Committee recommends that the Board take all appropriate actions in consequence of the medical referee's report forthwith upon receipt thereof and that thereafter the Board forthwith report any actions taken in consequence thereof to the Office of the Ombudsman.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board (cont'd)			
				Accordingly, the Appeal Board denied the complainant any further entitlement to benefits.	
				The Committee was unable to accept the recommendation of the Ombudsman, but nevertheless recommended that The Workmen's Compensation Board when the Policy of Benefit of the Doubt has been approved by the Corporate Board, reconsider this case by hearing, pursuant to section 75 of The Workmen's Compensation Act. At that hearing the Board shall consider the application of the policy of Benefit of the Doubt to the issues in this case. (Recommendation 17 in its 7th Report.)	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board (cont'd)			During a meeting between the Ombudsman's Office and the Board held on February 26, 1980, the Ombudsman's Office was advised that the complainant would be granted a new hearing as the amended policy of Benefit of Doubt had been adopted by the Board on February 12, 1980.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
4	77	That the Appeal Board vary its decision and order that the complainant receive a permanent disability award for the residual disability of his compensable accident. This award should be retroactive to the date of the worker's first injury excluding the periods in which the worker was in receipt of total temporary benefits.	5, Recommendation 31 5, Recommendation 32	That the Ombudsman forthwith obtain a medical report from the doctor in question in respect of the opinion attributed to him in the Ombudsman's Report pursuant to Sec. 22(3) of The Ombudsman Act. That report when received by the Ombudsman shall be forthwith transmitted to the Board. That the Board upon receipt of that medical report conduct a hearing pursuant to Sec. 75 of The Workmen's Compensation Act and that the Appeal Board Panel presiding at that hearing consider the application of the policy of benefit of the doubt to the circumstances of this case.	On the question of the application of the policy of benefit of the doubt the Board stated that: "The Appeal Board has considered the application of the policy of benefit of the doubt in the circumstances of this case and has concluded on the basis of the medical opinion that the policy is not applicable". In the Committee's opinion this decision and the conclusion referable to the policy of benefit of the doubt was premature, because it had recommended in its 5th Report that the Board reformulate that policy to one which is more workable and understandable. Therefore, the Committee in is 7th Report recommended that The Workmen's Compensation Board reconsider this case pursuant to section 75 when the coporate board has finally

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR Workmen's Compensation Board (cont'd)			
				adopted and approved the policy of Benefit of Doubt as discussed with the Ombudsman and this Committee. (Recommendation 16).	The revised Policy of Benefit of Doubt was adopted by the Corporate Board and a new hearing is scheduled.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
5	60	That the Appeal Board should revoke its decision dated March 3, 1976, and order that the complainant be granted entitlement to a Permanent Disability Award in recognition of a low back disability.	6, Recommendation 8	That the Workmen's Compensation Board revoke its decision dated March 3, 1976 and order that the complainant is entitled to a permanent disability award respecting the low back disability for the periods referenced in the Ombudsman's Report.	The Board concluded in a decision dated August 14, 1979 that the complainant aggravated his pre-existing degenerative disc condition at the time of his original accident and ordered that he be examined to determine his degree of residual low back disability resulting from accident. The complainant was examined by a Pension Medical Advisor and again by a senior team of the Permanent Disability Section. The assessors found "very little in the way of positive findings" to establish any residual low back disability. No pension was granted and this decision was confirmed by the Claims Review Branch of the W.C.B. in December, 1979.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
6	38	That the Appeal Board should reconsider its December 15, 1971 decison in the light of (this) report with a view to granting (the worker) entitlement to a Permanent Disability Award for his disability diagnosed as post-traumatic neurosis. Any award should be made retroactive to June 4, 1971 when (the worker's) temporary benefits were terminated.	7	The W.C.B. reconsider, by hearing, its decison of December 15, 1971. In that hearing the Board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the Medical Referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.	On October 24, 1979 the Board rendered a decision directing that the additional medical report, the detailed summary and recommendation of the Select Committee be referred to the Medical Referee for his further opinion and report. The Medical Referee was to examine the complainant if, in his opinion, such an examination was required. After receiving the Medical Referee's report, the Board would consider further appropriate action prior to reconsideration under Section 75 of The Workmen's Compensation Act. The Medical Referee's report has not yet been received so there has been no further action.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
6	39	That the Workmen's Compensation Board grant the complainant a 100% Provisional Pension from September 15, 1975 to September 15, 1978 for a psychological disability arising out of the treatment for a compensable liver dysfunction.	7, Recommendation 14	The W.C.B. reconsider, by hearing, the matter pursuant to Sec. 75 of The Workmen's Compensation Act to determine the extent to which total benefits paid to this complainant should be increased.	In a decision dated October 24, 1979 the Board directed that arrangements be made for the complainant to be re-examined by the psychiatrist who examined him in May, 1975. The psychiatrist was to be asked to express an opinion as to the degree of the complainant's disability which could be considered to be attributable to his organic liver dysfunction during the period September 15, 1975 to September 15, 1978. On receipt of the subsequent report, the complainant was to be granted a new hearing. The medical examination took place in February, 1980. The report was received on February 12, 1980. In the Board's opinion it required further clarification. The further hearing contemplated has not yet been arranged.
			Recommendation 15	That for the purpose of the hearing, the W.C.B. arrange for the complainant to be examined by its consultant psychiatrist who originally examined the complainant in May of 1975 and that the psychiatrist be required to express an opinion specifically as to what proportion of the psychiatric disability suffered by the complainant is attributable to the organic liver dysfunction.	

APPENDIX B

RECOMMENDATIONS UNDER SECTION 22(3) (d) or (e)

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS					
		Liquor Control Board of Ontario					
4	22	That 1) any applicant for an agency outlet be advised that notwithstanding the views expressed by any servant of the Board, a final decision to grant such an agency outlet is made by the members of the Board alone, 2) given the finding the complainant was misled by a servant of the Board, the Board should further consider the complainant's application, 3) that the Board give the complainant reasons for its decision and that reasons be given to any applicant for an agency outlet if he is so denied.	Oct. 21, 1977	Board agreed to implement recommendation			

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS					
		Liquor Control Board of Ontario					
5	Line Summary 400 pg. 32	That 1) the Board pay compensation to the complainant in an amount to be determined for loss suffered as a result of wrongful dismissal. 2) The Board issue a written directive to all those persons responsible for hiring and supervising personnel, advising them that the labour activity of a part-time employee or applicant for part-time employment in his full-time occupation is not a factor to be considered in determining whether to continue or to commence the employment of that employee or applicant.	Feb. 10, 1978	Chairman agrees to implement recommendation.			Compensation paid.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF EDUCATION					
2	47	That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power.	May 4, 1977	Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students.	3, Recommendation 23	That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities.	Ministry is conducting a feasability study.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES					
2	57	That The Public Service Superannuation Act be amended in order to eliminate all restrictions on the re-employment of provincial superannuates except where the nature of their re-employment is such that they resume contribution to the Public Service Superannuation Fund.	Aug. 31, 1976	Executive Secretary of the Civil Service Commission agreed to recommend to Management Board of Cabinet changes in Public Service Superannuation Act.	3, Recommendation 24	That the Ministry table appropriate legislation in the Legislature during the current session removing the present restriction on the total current earnings of a provincial superannuate.	Necessary amendment has yet to be passed. The Ministry is awaiting the report of the Royal Commission on the Status of Pensions in Ontario in June 1980.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH					
3	40	That 1) all applicants for the right to construct a nursing home be informed well in advance of the due date for application, of the criteria upon which the Ministry intends to rely in making the award for a nursing home including the weight to be attached to each factor. 2) every unsuccessful candidate be provided with written reasons as to why his proposal was rejected based on these criteria. 3) The NursingHomes Act, 1972 be amended in order that provision be made for the successful candidate for the construction of a new	May 4, 1977	Agreed to implement recommendation.	5, page 32. The Committee considered this complaint for the purpose of follow-up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's 3rd Report. The Executive Chairman of the Area Planning Coordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the Ombudsman dated May 4, 1977. The		The Ministry has implemented a procedure of informing by letter persons being awarded new licence as a result of competition. Letter will set out agrement as to schedule of events covering period of construction and prelicencing inspection. Necessary amendments have yet to be enacted.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd) home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence.				Committee has attached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will continue to fully comply with the recommendations of the Ombudsman.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH					
4	45	That the Ministry consider what changes should be made to The Public Hospitals Act, Section 47 in order to give effect to the principle of a more widely distributed memberhsip on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggsted that this enquiry be assigned to an organization such as the Ontario Council of Health.	Jan. 1978	The Deputy Minister took the position that decisons of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions.	5, Recommendation 27 6, Recommendation 1	That the Ministry of Health implement as soon as possible the recommendation of the Ombudsman. That the Ministry of Health consider what changes should be made to The Public Hospitals Act and section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	The Minister's view is that until experience otherwise dictates the optimal way of ensuring an appropriate balance is through careful selection of the members of the Hospital Appeal Board. As to the issue of ensuring that the appropriate balance is represented, not only on the full Board, but also on a quorum of the Board, the Minister recognizes that in theory this can only be guaranteed by a statutory change. However, in view of the assurance given by the Chairman of

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS

MINISTRY OF HEALTH (cont'd)

the Hospital Appeal Board, previously reported to the Committee that a quorum will consist of the full Board, except where the parties otherwise agree or one of the members of the Board has a conflict of interest in a particular case, the Minister considers that a Legislative amendment is not required at this time. The Minister proposes to ensure that appointments to the Board will always provide the approrpiate balance (as indicated February 27, 1979). A system of time limited and staggered appointments will be in-

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					troduced, replacing the current system of appointments whereby members of the Hospital Board are appointed at pleasure. This change can be implemented through an Order-in-Council without the necessity for legislative change. The Minister has written to the Chairman of the Ontario Council of Health to ascertain what alternative systems for hospital appointments are in place in other jurisdictions. Once the Minister receives the report of the Council of Health, he will then be in a position to decide on the further course of enquiry. The Minister will release the report when it is received and has been reviewed by the Ministry.

APPENDIX C

STATEMENT ISSUED BY THE WORKMEN'S COMPENSATION BOARD

The Workmen's Compensation Board
2 Bloor Street East, Toronto, Ontario M4W 3C3
Telephone (416) 965 8880

Michael Starr
Chairman

February 20th, 1980.

The Honourable Donald R. Morand, Q. C.,
The Ombudsman/Ontario,
Suite 600,
65 Queen Street West,
Toronto, Ontario.
M5H 2M5

Dear Mr. Morand:

Re: Policy on Benefit of Doubt

On behalf of the Committee of the Board dealing with this matter, and of the Board, I want to thank you and Mr. Brian Goodman for your helpful comments and suggestions leading to a policy statement on Benefit of the Doubt, satisfactory to you and to the Board.

A copy of the policy as approved by the Corporate Board on February 12th, 1980 is attached for your information.

Yours sincerely,

Michael Starr

MS/dh

Attach.

BENEFIT OF DOUBT

The 'Benefit of Doubt' principle is applied to all levels of decision-making at the Board.

The Board interprets the principle as meaning that it is not necessary to adduce conclusive proof in support of a claim for compensation.

When applied to an injured employee, the effect is that the employee does not require a preponderance of evidence in support of his claim. Rather, if there is doubt on any issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the injured employee. On the other hand, speculation will not suffice.

The Policy of Benefit of Doubt shall not apply where an issue can be decided on the balance of probabilities.

January 29, 1980.

APPROVED BY THE BOARD

this 12 day of Feb. 1980

Secretary

APPENDIX D

STATISTICAL TABLES

COMPLAINT DISPOSITION SUMMARY
FISCAL YEAR 1979/80

NUMBER OF FILE OPENINGS/CLOSINGS	
OPENED*	5,475
CLOSED	4,655
IN PROGRESS	2,562

JURISDICTION	NUMBER OF COMPLAINTS
WITHIN	2,354
OUTSIDE	2,375
NOT DETERMINED	102
INFORMATION REQUESTS/SUBMISSIONS	608
	5,439

FINAL ACTION	
LISTEN	283
EXPLAIN	453
ADVISE	250
REFER	1,131
INQUIRE/REFER	691
INQUIRE	2,348
SUGGEST	78
RECOMMENDATION	36
REFUSE TO INVESTIGATE OR FURTHER TO INVESTIGATE	169
	5,439

*This figure includes 1,215 files that were reopened.

SETTLEMENT	NUMBER OF COMPLAINTS
STATUS:	
RESOLVED/INVOLVED	1,553
RESOLVED/INDEPENDENT	57
TOTAL RESOLVED	1,610
FINDINGS:	
SUPPORTED	108
NOT SUPPORTED	998
NOT RESOLVED:	
REASONS:	
ABANDONED	415
WITHDRAWN	354
NO SOLUTION IDENTIFIED	13
CIRCUMSTANCES CHANGED	13
INFORMATION REQUESTS/SUBMISSIONS	608
OUTSIDE JURISDICTION	2,244
REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE	169
RECOMMENDATION DENIED	13
	3,829
RESULTS: (ONLY RESOLVED COMPLAINTS)	
FAVOUR COMPLAINANT	613
FAVOUR "GOVERNMENTAL ORGANIZATION"	997
	1,610

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

GOVERNMENT OF ONTARIO Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Agriculture and Food	9	2	2	2	15
A.R.D.A.	2				2
Crop Insurance Arbitration Board of Ontario	1				1
Crop Insurance Commission		2			2
Ontario Chicken Producers' Marketing Board		12			12
Ontario Cream Producers' Marketing Board		1			1
Ontario Egg Producers' Marketing Board		1			1
Ontario Milk Marketing Board		2			2
Ontario Pork Producers' Marketing Board		1	1		2
Ontario Turkey Producers' Marketing Board		4		1	5
Attorney General	16	24	1	11	52
Criminal Injuries Compensation Board	1	5	1	3	10
Ontario Municipal Board	19	6		3	28
Colleges and Universities	20	11	2	2	35
Colleges of Applied Arts & Technology	12	12	1	1	26
Colleges of Applied Arts & Technology Board of Governors			1		1

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Community and Social Services	34	84	1	55	174
Centres for the Developmentally Handicapped	4	1			5
Training Schools	28	1		9	38
Total	66	86	1	64	217
Social Assistance Review Board	28	7	1		36
Consumer and Commercial Relations	76	12	6	32	126
Board of Censors	4				4
Liquor Control Board	7	6		1	14
Liquor Licence Board	4	1		2	7
Ontario Securities Commission	4	1			5
Pension Commission of Ontario		1			1
Residential Premises Rent Review Board	17	2	3		22
Residential Tenancy Commission		1			1
Correctional Services	24	13		8	45
Correctional Centres	396	123	2	61	582
Detention Centres	373	50	4	63	490
Jails	336	58	2	33	429
Community Resource Centres	5	1		1	7
Total	1134	245	8	166	1553
Board of Parole	35	12		7	54

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Culture and Recreation	3	2		2	7
Ontario Lottery Corporation	7	2			9
Ontario Science Centre Board of Trustees	1				1
Province of Ontario Council for the Arts	6				6
Royal Ontario Museum Board of Trustees	6		1		7
Education	18	12	1	2	33
Ontario Institute for Studies in Education				1	1
Provincial Schools Authority	2	1			3
Teacher's Superannuation Commission		1		1	2
Energy	1	3			4
Ontario Hydro	25	8	3	1	37
Environment	32	6	4	2	44
Environmental Assessment Board		2			2
Government Services	19	3	1	2	25
Public Service Superannuation Board	4			2	6

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Health	18	8	1	8	35
Psychiatric Hospitals	57	15	5	13	90
O.H.I.P.	29	9	3	8	49
Total	104	32	9	29	174
Advisory Review Board (Mental Health)		4		1	5
Alcoholism and Drug Addiction Rearch Foundation				1	1
Board of Directors of Chiropractic				1	1
Board of Directors of Masseurs	3				3
Board of Ophthalmic Dispensers	1				1
Board of Regents of Chiropody				1	1
Governing Board of Denture Therapists				1	1
Health Disciplines Board	2				2
Review Boards for Psychiatric Facilities	1				1
Housing	16	11	2	5	34
Ontario Housing Corporation	56	13	1	8	78
Ontario Land Corporation	1				1
Ontario Mortgage Corporation	3				3
Industry and Tourism	1	1		1	3
Northern Ontario Development Corporation	1				1
Ontario Development Corporation	4	4		2	10

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Intergovernmental Affairs	4	3		3	10
Labour	24	12	1	5	42
Ontario Human Rights Commission	18	4		2	24
Ontario Labour Relations Board	2	2	1		5
Workmen's Compensation Board	264	247	4	111	626
Natural Resources	78	32	5	8	123
St. Lawrence Parks Commission	2				2
Northern Affairs	1	1			2
Ontario Northland Transportation Commission	1	1		1	3
Revenue	53	10	3	1	67
Solicitor General	4	7	1	1	13
Ontario Police Commission	16	1		1	18
Ontario Provincial Police	3	27	1	4	35
Transportation and Communications	102	41	10	20	173
Ontario Highway Transport Board	2				2

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Treasury and Economics	2	1			3
Ontario Municipal Employees Retirement Board	1	1			2
Government of Ontario Other					
Management Board		2			2
Civil Service Commission	3	3		1	7
Grievance Settlement Board	1				1
Ontario Public Service Labour Relations Tribunal	2				2
Public Service Grievance Board	1				1
Niagara Escarpment Commission		1			1
Ontario Status of Women Council	1				1
Office of the Ombudsman		3		8	11
Executive Office		1			1
Ontario Government Other			3	3	6
Government of Ontario Total	2357	962	79	527	3925
Courts		199		7	206
Total		199		7	206

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

FEDERAL GOVERNMENT DEPARTMENT/AGENCIES	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Canadian Penitentiary Services		14			14
Central Mortgage and Housing		9			9
Consumer and Corporate Affairs		3		1	4
Employment and Immigration		53		1	54
Health and Welfare		28		7	35
Indian Affairs & Northern Development		9		1	10
Justice		6			6
National Parole Board		11			11
Post Office		6			6
Public Service Commission		1			1
Revenue Canada - Taxation		24		2	26
Royal Canadian Mounted Police		5		1	6
Transport		4			4
Veterans Affairs		9		2	11
Federal Government - Other		43		8	51
Total		225		23	248

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

PRIVATE	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Associations/Groups		35		3	38
Children's Aid Society		15			15
Catholic Children's Aid Society		4			4
Doctors - Patients		17			17
Hospitals		29			29
Lawyers - Clients		79		2	81
Law Society of Upper Canada		32		3	35
College of Physicians & Surgeons		5			5
Private Business		349		8	357
Private Individual		63		4	67
Universities - Private		12		1	13
Private - Other		27		11	38
Total		667		32	699
MUNCIPALITIES/LOCAL AUTHORITIES					
Municipal Conservation Authority		5			5
Municipal Boards of Education		17			17
Municipal Fire Department		2			2
Municipal Garbage		1			1
Municipal Governing Body		52		2	54
Municipal Housing		11		1	12

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Municipal Hydro		10			10
Municipal Parks & Recreation		1			1
Municipal Planning Boards		7		1	8
Municipal Police	1	90	1	5	97
Municipal Public Health		3			3
Municipal Roads		14			14
Municipal Sewers		6			6
Municipal Taxes		12		2	14
Municipal Transit		3			3
Municipal Water		8			8
Municipal Welfare		23		2	25
Committees of Adjustment		3			3
Municipal - Other		26			26
Total	1	294	1	13	309
INTERNATIONAL					
Total		4		3	7

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1979/80

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
OTHER PROVINCES					
Total	—	24	—	3	27
NO ORGANIZATION SPECIFIED					
Total	—	—	22	—	22
OVERALL TOTAL	2358	2375	102	608	5443*

*These figures exceed the number of closed complaint (5439) because some complaints involve more than one organization.

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